

# EXHIBIT B

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PATRICIA DESANTIS,  
individually and as Successor  
in Interest for RICHARD  
DESANTIS, deceased, and as  
Guardian Ad Litem for DANI  
DESANTIS, a minor and TIMOTHY  
FARRELL, a minor,

**CERTIFIED COPY**

Plaintiffs,

vs.

CASE NO. C 07 3386 JSW

CITY OF SANTA ROSA, JERRY  
SOARES, RICH CELLI, TRAVIS  
MENKE, PATRICIA MANN and DOES  
1 through 25, inclusive,

Defendants.

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DEPOSITION OF  
RICHARD CELLI - VOLUME I  
November 14, 2007

Reported by:  
JUDY A. MANFRED  
CSR No. 4748

HANNAH KAUFMAN & ASSOCIATES, INC.  
Certified Shorthand Reporters  
472 Pacheco Street  
San Francisco, California 94116  
(415) 664-4269

1	I N D E X	1	RICHARD CELLI,
2	PAGE	2	sworn as a witness by the Certified
3	DEPOSITION OF RICHARD CELLI - VOLUME I	3	Shorthand Reporter, testified as follows:
4	EXAMINATION BY MR. SCOTT	4	-oOo-
5		5	THE VIDEOGRAPHER: Good afternoon. This marks
6	E X H I B I T S	6	the beginning of volume 1, videotape 1 in the deposition
7	(No Exhibits Marked.)	7	of Richard Celli in the matter of Patricia Desantis, et
8		8	al. versus City of Santa Rosa, et al. in the United States
9		9	District Court, Northern District of California, Court
10		10	case number C 07-3386 JSW. Today's date is November 14th,
11		11	2007 and the time it 1:39. The location of this
12		12	deposition is 1375 Sutter Street, Suite 222, San
13		13	Francisco, California. The deposition was noticed by John
14		14	Scott of The Scott Law Firm and the videotape is being
15		15	produced on behalf of the plaintiff. The video operator
16		16	is James Taylor, a California Notary Public for the County
17		17	of San Francisco, employed by Dan Mottaz Video
18		18	Productions, LLC, 182 Second Street, Suite 202, San
19		19	Francisco, California 94105, 415-624-1300. The Court
20		20	Reporter is Judy Manfred.
21		21	Would counsel please identify themselves and
22		22	state whom they represent.
23		23	MR. SCOTT: John Scott appearing for the
24		24	plaintiffs.
25		25	MR. SAFIRE: Eric Safire appearing for plaintiff.
	2		4
1	BE IT REMEMBERED that pursuant to Notice of	1	MS. FOWLER: Caroline Fowler, Assistant City
2	Taking Deposition, and on Wednesday, the 14th day of	2	Attorney appearing for all of the defendants.
3	November, 2007, commencing at the hour of 1:39 p.m.	3	THE VIDEOGRAPHER: If there are no stipulations
4	thereof, at the offices of The Scott Law Firm, 1375 Sutter	4	the Court Reporter may administer the oath.
5	Street, Suite 222, San Francisco, California, before me	5	(The oath was administered by the Court
6	JUDY A. MANFRED, a Certified Shorthand Reporter in the	6	Reporter.)
7	State of California, personally appeared,	7	EXAMINATION BY MR. SCOTT
8	RICHARD CELLI,	8	MR. SCOTT: Q. Would you state your full name
9	called as a witness herein; and the said witness, being by	9	for the record, please?
10	me first duly sworn, was thereupon examined and testified	10	<b>A. Richard Todd Celli.</b>
11	as is hereinafter set forth.	11	Q. Have you ever been known by any other names?
12		12	<b>A. No.</b>
13	A P P E A R A N C E S	13	Q. You are a sergeant with the Santa Rosa Police
14	THE SCOTT LAW FIRM, 1375 Sutter Street, Suite	14	Department; is that correct?
15	222, San Francisco, California 94109, represented by JOHN	15	<b>A. Yes.</b>
16	H. SCOTT, Attorney at Law, appeared on behalf of the	16	Q. And do you have a preference whether I refer to
17	Plaintiffs.	17	you as Mr. Celli or Sergeant Celli?
18	LAW OFFICES OF ERIC SAFIRE, 2431 Fillmore	18	<b>A. Mister is fine.</b>
19	Street, San Francisco, California 94115, represented by	19	Q. Mr. Celli, my name is John Scott. I'm one of the
20	ERIC SAFIRE, Attorney at Law, appeared on behalf of the	20	attorneys who represents the plaintiffs in this case.
21	Plaintiffs.	21	That would be Richard Desantis, wife, and his two-year-old
22	OFFICE OF THE CITY ATTORNEY, 100 Santa Rosa	22	daughter in a lawsuit that's been brought against the City
23	Avenue, Santa Rosa, California 95402-1678, represented by	23	of Santa Rosa, you and others, relating to a shooting
24	CAROLINE L. FOWLER, Assistant City Attorney, appeared on	24	death that occurred earlier this year in April.
25	behalf of the Defendants.	25	First of all, just so we have it clear that
	3		5

DEPOSITION OF RICHARD CELLI

<p>1 firing of weapons he's doing recreationally --</p> <p>2 MR. SCOTT: Anything. Either on duty or off</p> <p>3 duty.</p> <p>4 Q. I mean in the last, say, five years how often</p> <p>5 have you fired weapons, other than when you were just at</p> <p>6 the range?</p> <p>7 <b>A. I hunt on occasion.</b></p> <p>8 Q. Okay. How often, an average, in a year?</p> <p>9 <b>A. Maybe once every other year.</b></p> <p>10 Q. And what kind of hunting?</p> <p>11 <b>A. Elk, deer, small game.</b></p> <p>12 Q. Is that with a rifle, a shotgun or both?</p> <p>13 <b>A. Both.</b></p> <p>14 Q. Do you use a rifle for elk and deer and the</p> <p>15 shotgun for smaller game?</p> <p>16 <b>A. A rifle for elk and deer and a rifle or shotgun</b></p> <p>17 <b>for small game.</b></p> <p>18 Q. And other than the incident that we're here about</p> <p>19 that occurred in April of this year, have you ever fired</p> <p>20 your weapon on duty, other than at the range?</p> <p>21 <b>A. Once.</b></p> <p>22 Q. And when was that?</p> <p>23 <b>A. February 23rd, 2007.</b></p> <p>24 Q. And where did that occur?</p> <p>25 MS. FOWLER: I'm going to object for the record.</p> <p style="text-align: right;">18</p>	<p>1 invades his right to privacy as to his medical conditions.</p> <p>2 Let me talk to him.</p> <p>3 MR. SCOTT: Okay. Off the record.</p> <p>4 THE VIDEOGRAPHER: The time now is 2:01 and we</p> <p>5 are off the record.</p> <p>6 (Off the record from 2:01 p.m. to 2:02 p.m.)</p> <p>7 MS. FOWLER: Let's go back on the record. I've</p> <p>8 spoken to Sergeant Celli and he --</p> <p>9 THE VIDEOGRAPHER: Wait. Hold on one second.</p> <p>10 The time now is 2:02. We are on the record.</p> <p>11 MS. FOWLER: I spoke with Sergeant Celli and he</p> <p>12 does not have a concern about telling you that information</p> <p>13 so you can go ahead and answer the question.</p> <p>14 MR. SCOTT: Thank you. And I'll stipulate right</p> <p>15 now, I'm not going to stipulate -- I'm not going to</p> <p>16 attempt to subpoena any of those medical records. I</p> <p>17 really don't care.</p> <p>18 MR. SCOTT: Q. So what kind of injuries did you</p> <p>19 receive on those two occasions?</p> <p>20 <b>A. I believe it was either 2001 or 2002, I broke my</b></p> <p>21 <b>left elbow in a training accident.</b></p> <p>22 Q. And how did the -- how did it occur that you</p> <p>23 broke your elbow in a training accident?</p> <p>24 <b>A. I fell into a basement.</b></p> <p>25 Q. What was the other injury?</p> <p style="text-align: right;">20</p>
<p>1 This is an open criminal investigation and the</p> <p>2 investigation is still pending. I will allow you to ask</p> <p>3 him a limited number of questions about that if you</p> <p>4 stipulate that this portion of the deposition would be</p> <p>5 subject to the protective order.</p> <p>6 MR. SCOTT: I will. And let's do it near the</p> <p>7 end, so we can just have it all on one spot. It makes it</p> <p>8 easier for me and the Court Reporter. So hopefully</p> <p>9 Mr. Safire or somebody will remind me to come back to it</p> <p>10 later.</p> <p>11 MR. SAFIRE: I wrote down later.</p> <p>12 MR. SCOTT: Okay. We'll save that for the end of</p> <p>13 the deposition.</p> <p>14 Q. Have you ever been shot?</p> <p>15 <b>A. No.</b></p> <p>16 Q. Have you ever been shot at?</p> <p>17 <b>A. No.</b></p> <p>18 Q. Have you ever been injured in the line of duty?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. On how many occasions? I'm not talking about,</p> <p>21 you know, a little bruise, but where you missed time from</p> <p>22 work where you had to go to the hospital?</p> <p>23 <b>A. Twice.</b></p> <p>24 Q. And what type of injuries were those?</p> <p>25 MS. FOWLER: Well, I'm going to object that that</p> <p style="text-align: right;">19</p>	<p>1 <b>A. I don't know the year. I would say approximately</b></p> <p>2 <b>2003 I was involved in a physical altercation with an</b></p> <p>3 <b>arrestee and hurt my right quadricep, right hamstring,</b></p> <p>4 <b>dislocated my right hip, injured my L5 and S1 disks in my</b></p> <p>5 <b>back.</b></p> <p>6 Q. Sounds like it was quite a tussle. Were there</p> <p>7 any other officers present at the time or was it just a</p> <p>8 one-on-one situation?</p> <p>9 <b>A. There was one other officer.</b></p> <p>10 Q. And can you just generally describe the suspect?</p> <p>11 I mean, man, woman, young, old, white, African-American?</p> <p>12 <b>A. Middle-aged white male.</b></p> <p>13 Q. Was he under the influence of PCP or something,</p> <p>14 if you know?</p> <p>15 <b>A. I don't know.</b></p> <p>16 Q. Was he a big guy?</p> <p>17 <b>A. No.</b></p> <p>18 Q. Did you draw your weapon at any time in that</p> <p>19 incident?</p> <p>20 <b>A. Give me a second. No.</b></p> <p>21 Q. Did you use any weapons in that incident other</p> <p>22 than your hands, your arms, your legs, fists, whatever?</p> <p>23 <b>A. No.</b></p> <p>24 Q. Did you have any other weapons with you at the</p> <p>25 time?</p> <p style="text-align: right;">21</p>

DEPOSITION OF RICHARD CELLI

<p>1 with Officer Ellsworth as a canine officer before the 2 shooting that we're here about? 3 <b>A. Yes.</b> 4 Q. And what had you seen that dog do in the line of 5 duty prior to April of 2007? 6 <b>A. Very limited training, the vehicle searches at</b> 7 <b>high risk vehicle stops, a handful of building searches.</b> 8 Q. Okay. Had you ever observed Officer Ellsworth's 9 canine locate a suspect as part of a search? 10 <b>A. Not that I recall.</b> 11 Q. Okay. Do you know if Officer Ellsworth's dog was 12 trained to search for suspects? 13 <b>A. I don't know the specific training for the dog,</b> 14 <b>but it's my belief that all of our dogs are trained to</b> 15 <b>search.</b> 16 Q. I'm talking about people, not drugs? 17 <b>A. Correct.</b> 18 Q. Okay. Do you know if the Santa Rosa Police 19 Department has any canines that are just used for 20 sniffing, in other words, not searching for people, but 21 just sniffing around for drugs? 22 <b>A. No, we don't.</b> 23 Q. Have you received training in use of force 24 options? 25 <b>A. Yes.</b></p> <p style="text-align: right;">42</p>	<p>1 skills? 2 <b>A. Yes.</b> 3 Q. What does that term mean to you? 4 <b>A. Some skills that are taught or learned by</b> 5 <b>officers, unless they are repeated and kept up to date,</b> 6 <b>can perish and your skills in that won't be the same as</b> 7 <b>maybe they had been.</b> 8 Q. Do you believe that you had been taught some 9 skills that you have lost because you just haven't had 10 occasion to use it? 11 MS. FOWLER: Well, I'm going to object. I think 12 that calls for speculation. 13 MR. SCOTT: I don't need him to speculate. 14 Q. If you don't know, say you don't know. 15 <b>A. I don't think I've lost any skills.</b> 16 Q. Okay. Now, are you also familiar with the term 17 either escalation of force or continuum of force? 18 <b>A. Yes.</b> 19 Q. Which term are you more familiar with, escalation 20 or continuum? 21 <b>A. Continuum.</b> 22 Q. What does that term continuum of force mean to 23 you? 24 <b>A. Means the level of force that is used varies</b> 25 <b>based upon the dynamics or the situation, and that the</b></p> <p style="text-align: right;">44</p>
<p>1 Q. Okay. And when did you first receive training in 2 that regard? 3 <b>A. The police academy.</b> 4 Q. So from 1990 up until the present? 5 <b>A. Yes.</b> 6 Q. And has that training changed over the last 7 17 years? 8 MS. FOWLER: The training at the academy? 9 MR. SCOTT: Q. No, the training that he's 10 received in use of force options? 11 <b>A. Some tactics have changed but, generally, it's</b> 12 <b>the same training.</b> 13 Q. What tactics have changed? 14 <b>A. Control holds, the type of restraints, physical</b> 15 <b>restraints that are placed on the person, meaning what we</b> 16 <b>call as now maximum restraints, the tactics we use to</b> 17 <b>approach people, or I guess to put control holds on.</b> 18 Q. Anything else changed? 19 <b>A. I want to say not significantly.</b> 20 Q. Okay. And do you have to receive training 21 periodically to meet any requirements to continue 22 employment at the Santa Rosa Police Department? 23 <b>A. We're required to show competency in defensive</b> 24 <b>tactics in firearms.</b> 25 Q. And have you ever heard the term perishable</p> <p style="text-align: right;">43</p>	<p>1 <b>amount of force used in those situations can change or may</b> 2 <b>need to be modified.</b> 3 Q. What levels of force have you been trained to use 4 as a Santa Rosa police officer, starting with hands-on -- 5 or I guess your verbal command would be the beginning, but 6 after verbal command, between that and deadly force, what 7 are all the options you're aware of? 8 <b>A. Well, there's a verbal. Well, there's presence</b> 9 <b>even before verbal.</b> 10 Q. Okay. 11 <b>A. Light touch, control holds, personal body</b> 12 <b>weapons.</b> 13 Q. And what would those be? 14 <b>A. Hands and feet.</b> 15 Q. Okay. 16 <b>A. Impact weapons.</b> 17 Q. What would those be? 18 <b>A. Baton.</b> 19 Q. Anything else? 20 <b>A. Bean bag rounds, long-range projectiles.</b> 21 Q. What about flashlight? 22 <b>A. Yes.</b> 23 Q. Did you receive training in using a flashlight as 24 an impact weapon? 25 <b>A. Not specifically. However, it is not -- how do I</b></p> <p style="text-align: right;">45</p>

<p>1 <b>phrase this? It can be used.</b></p> <p>2 Q. On impact weapons you mentioned baton, bean bag</p> <p>3 and projectiles. Anything else you can think of?</p> <p>4 MS. FOWLER: With respect to non-lethal or do you</p> <p>5 want him to move on to the other...</p> <p>6 MR. SCOTT: No, I think we're still on non-lethal</p> <p>7 impact weapons.</p> <p>8 THE WITNESS: I don't think as far as impact</p> <p>9 weapons go.</p> <p>10 MR. SCOTT: Q. You mentioned the bean bag. What</p> <p>11 is that?</p> <p>12 <b>A. Bean bag is a shot out of a 12-gauge shotgun.</b></p> <p>13 Q. And is that something you've been trained to use?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Do they have any other name for it or is it still</p> <p>16 called a bean bag?</p> <p>17 <b>A. I'm going to try to recall the specific name. I</b></p> <p>18 <b>can't recall the specific name.</b></p> <p>19 Q. Fair enough. You mentioned projectiles. What</p> <p>20 are those?</p> <p>21 <b>A. They're long-range impact weapons. For instance,</b></p> <p>22 <b>a Sage is a multi-round impact weapon, shoots a hard</b></p> <p>23 <b>projectile.</b></p> <p>24 Q. And are you trained to use the Sage?</p> <p>25 <b>A. Yes.</b></p> <p style="text-align: right;">46</p>	<p>1 Q. Sage for a longer distance?</p> <p>2 <b>A. Correct.</b></p> <p>3 Q. And have you been given training on what would be</p> <p>4 the appropriate range to use the shotgun instead of the</p> <p>5 Sage?</p> <p>6 MS. FOWLER: I'm going to object as an incomplete</p> <p>7 hypothetical. He's already told you it depends on the</p> <p>8 circumstances.</p> <p>9 MR. SCOTT: I understand that. I'm just talking</p> <p>10 about range.</p> <p>11 Q. I understand it can be depend on circumstances,</p> <p>12 but as far as range goes.</p> <p>13 <b>A. In general, general ideas on range, but no set</b></p> <p>14 <b>specifics for distance of -- as far as the further</b></p> <p>15 <b>distance.</b></p> <p>16 Q. When you trained with the bean bag round of a</p> <p>17 shotgun, what's the distance you train at?</p> <p>18 <b>A. Approximately 10 yards. I'm going to say</b></p> <p>19 <b>approximate because I'm not sure on it.</b></p> <p>20 Q. I just want your best estimate.</p> <p>21 <b>A. To up to 25 yards.</b></p> <p>22 Q. Okay. So you trained at approximately 10 to</p> <p>23 25 yards with the shotgun bean bag round?</p> <p>24 <b>A. Right.</b></p> <p>25 Q. These were estimates?</p> <p style="text-align: right;">48</p>
<p>1 Q. Did you have training on when it would be</p> <p>2 appropriate to use the Sage instead of the shotgun or the</p> <p>3 shotgun instead of the Sage?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. And what was that training?</p> <p>6 <b>A. We're trained to use that level of force to</b></p> <p>7 <b>effect the arrest or stop the activities of the suspect or</b></p> <p>8 <b>the intended target of that weapon. Again it's in our</b></p> <p>9 <b>continuum.</b></p> <p>10 Q. Were you given training on when it would be</p> <p>11 appropriate to use a shotgun instead of a Sage or a Sage</p> <p>12 instead of a shotgun? In other words, did they give you</p> <p>13 examples?</p> <p>14 <b>A. No.</b></p> <p>15 Q. So based on your training, do you have an</p> <p>16 understanding when it would be appropriate to use a Sage</p> <p>17 instead of a shotgun or a shotgun instead of a Sage?</p> <p>18 <b>A. It would depend on the type of circumstance</b></p> <p>19 <b>incident.</b></p> <p>20 Q. Can you give me an example of a situation where</p> <p>21 it would be appropriate to use a shotgun instead of a Sage</p> <p>22 or a Sage instead of a shotgun?</p> <p>23 <b>A. It would depend on a multitude of things.</b></p> <p>24 Q. Can you give me some examples?</p> <p>25 <b>A. Distance.</b></p> <p style="text-align: right;">47</p>	<p>1 <b>A. Estimates only.</b></p> <p>2 Q. And what about the Sage, what distance do you</p> <p>3 train with the Sage projectiles?</p> <p>4 <b>A. That approximate short distance to -- I couldn't</b></p> <p>5 <b>give a specific as far as how far out. Maybe because --</b></p> <p>6 Q. For training?</p> <p>7 <b>A. Well, it depends on your comfort level with a --</b></p> <p>8 <b>with each weapon such as a Sage on your -- comfortable</b></p> <p>9 <b>with your abilities. I would probably put it no more than</b></p> <p>10 <b>30 yards, 40 yards.</b></p> <p>11 Q. Are you more comfortable with a Sage or the</p> <p>12 shotgun -- with a bean bag?</p> <p>13 <b>A. I'm comfortable with them both.</b></p> <p>14 Q. Do you prefer one over the other?</p> <p>15 MS. FOWLER: And I'd object as incomplete</p> <p>16 hypothetical. If you can answer it, go ahead and answer</p> <p>17 it.</p> <p>18 THE WITNESS: No.</p> <p>19 MR. SCOTT: Q. Have you ever used the shotgun</p> <p>20 with the bean bag round in the line of duty?</p> <p>21 <b>A. No.</b></p> <p>22 Q. Have you ever used the Sage with the projectile</p> <p>23 in the line of duty?</p> <p>24 <b>A. No.</b></p> <p>25 Q. Okay. Now, you mentioned the low -- the</p> <p style="text-align: right;">49</p>

<p>1 non-lethal impact rounds. What would come next in the</p> <p>2 continuum of force?</p> <p>3 <b>A. OC sprays.</b></p> <p>4 Q. Also known as pepper spray?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. And what type of situations are you trained to</p> <p>7 use the OC spray?</p> <p>8 <b>A. A multitude of situations. Combative suspects,</b></p> <p>9 <b>crowd control.</b></p> <p>10 Q. How many times have you used OC spray in the line</p> <p>11 of duty, approximately?</p> <p>12 <b>A. Approximately two dozen times.</b></p> <p>13 Q. What would come next in the continuum of force?</p> <p>14 <b>A. The carotid restraint.</b></p> <p>15 Q. That would be applying force to the carotid</p> <p>16 arteries to cause someone to become unconscious?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. What would come next?</p> <p>19 <b>A. Taser.</b></p> <p>20 Q. By the way, let me backtrack a little bit. Have</p> <p>21 you ever used a carotid restraint in the line of duty?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. How many times?</p> <p>24 <b>A. Approximately two to three.</b></p> <p>25 Q. Now, you mentioned the Taser being next. Are you</p> <p style="text-align: right;">50</p>	<p>1 Q. Okay. What kind of cartridge is in the X26, do</p> <p>2 you know?</p> <p>3 <b>A. I don't know.</b></p> <p>4 Q. What would come after the Taser in the continuum</p> <p>5 of force?</p> <p>6 <b>A. The canines.</b></p> <p>7 Q. And were you trained when it was appropriate to</p> <p>8 use canines?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And what was that training?</p> <p>11 <b>A. Talks about how they're to be deployed, in what</b></p> <p>12 <b>circumstances, in general.</b></p> <p>13 Q. What do you recall about that training?</p> <p>14 <b>A. No specifics, but it gives generalities on types</b></p> <p>15 <b>of crime of violent offenders. Building searches.</b></p> <p>16 Q. When you say violent offenders, what do you mean</p> <p>17 by that?</p> <p>18 <b>A. Noncompliant or hostile subjects.</b></p> <p>19 Q. What does noncompliant mean?</p> <p>20 <b>A. Could be fleeing subjects, but that depends on</b></p> <p>21 <b>several circumstances.</b></p> <p>22 Q. Okay. What do you mean by hostile?</p> <p>23 <b>A. Physically fighting, threatening assault.</b></p> <p>24 Q. In the continuum of force what would come after</p> <p>25 the canines?</p> <p style="text-align: right;">52</p>
<p>1 train to use the Taser?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And now do you know if it's the M26 or the X26?</p> <p>4 <b>A. X26.</b></p> <p>5 Q. And do you know what the distance is for using</p> <p>6 the X26 Taser?</p> <p>7 <b>A. Depends on how it's used.</b></p> <p>8 Q. Explain what you mean by that.</p> <p>9 <b>A. It can be used at close contact with -- without</b></p> <p>10 <b>firing it. You're just using contact probes. It can be</b></p> <p>11 <b>used from there with the probes from close proximity up to</b></p> <p>12 <b>approximately 20 feet effectively.</b></p> <p>13 Q. Have you been trained to use it up to 20 feet?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. And have you ever used the Taser on duty?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. How many times?</p> <p>18 <b>A. Approximately five to seven.</b></p> <p>19 Q. And was it successful -- successfully implemented</p> <p>20 when you used it?</p> <p>21 MS. FOWLER: I'm going to object. That's vague</p> <p>22 and ambiguous as to what you mean by successful.</p> <p>23 MR. SCOTT: Q. Did it accomplish the goal you</p> <p>24 were trying to achieve when you used the Taser?</p> <p>25 <b>A. Not every time.</b></p> <p style="text-align: right;">51</p>	<p>1 <b>A. I don't know if I've missed anything there.</b></p> <p>2 <b>Lethal force.</b></p> <p>3 Q. And what types of lethal force were you trained</p> <p>4 to use?</p> <p>5 <b>A. Firearms.</b></p> <p>6 Q. What kind of firearms?</p> <p>7 <b>A. Pistol.</b></p> <p>8 Q. Anything else?</p> <p>9 <b>A. Shotgun.</b></p> <p>10 Q. Anything else?</p> <p>11 <b>A. Rifle.</b></p> <p>12 Q. Now, in April of 2007, the night of the shooting</p> <p>13 incident, did you have a baton available?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Did you have a shotgun available?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. With bean bag rounds; is that available to you?</p> <p>18 <b>A. I didn't have it in my car.</b></p> <p>19 Q. Okay. What did you have in your car that you</p> <p>20 could use with a shotgun?</p> <p>21 <b>A. I had a shotgun.</b></p> <p>22 Q. What type of ammunition did you have for the</p> <p>23 shotgun?</p> <p>24 <b>A. Double 00 buck and slug.</b></p> <p>25 Q. What's slug, what's that?</p> <p style="text-align: right;">53</p>

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<p>1       <b>A. It's a single round.</b></p> <p>2       Q. Is that lethal?</p> <p>3       <b>A. Yes.</b></p> <p>4       Q. And why didn't you have any non-lethal shotgun</p> <p>5 rounds with you?</p> <p>6       <b>A. I didn't take a shot -- you don't change those --</b></p> <p>7 <b>you wouldn't put a non-lethal round into a standard</b></p> <p>8 <b>shotgun.</b></p> <p>9       Q. You'd need a special shotgun?</p> <p>10      <b>A. Yes.</b></p> <p>11      Q. How do you get that special shotgun?</p> <p>12      <b>A. They're available to take out by the officers who</b></p> <p>13 <b>have been qualified and trained to use them.</b></p> <p>14      Q. And were you one of those officers?</p> <p>15      <b>A. Yes.</b></p> <p>16      Q. And did you have it available on the night of the</p> <p>17 shooting?</p> <p>18      <b>A. It was not with me.</b></p> <p>19      Q. Why not?</p> <p>20      <b>A. I didn't take it out with me.</b></p> <p>21      Q. Why not?</p> <p>22      <b>A. I just didn't take it out.</b></p> <p>23      Q. Any reason why?</p> <p>24      <b>A. I didn't put it in my car.</b></p> <p>25      Q. Was that your custom or habit that you didn't put</p> <p style="text-align: right;">54</p>	<p>1       <b>A. Yes.</b></p> <p>2       Q. And that wasn't anything you had to clear with</p> <p>3 the lieutenant or anyone in your chain of command?</p> <p>4       <b>A. No.</b></p> <p>5       Q. Were you aware of other sergeants who carried the</p> <p>6 Sage and the shotgun with the bean bag rounds in their</p> <p>7 cars?</p> <p>8       <b>A. Some do.</b></p> <p>9       Q. Do you know why they do?</p> <p>10      MS. FOWLER: Object. Calls for speculation.</p> <p>11      MR. SCOTT: Q. Just say you don't know if you</p> <p>12 don't know. I just said do you know why they do?</p> <p>13      <b>A. Personal trust.</b></p> <p>14      Q. Okay. Was there -- if you'd wanted to put the</p> <p>15 shotgun with the bean bag rounds in your car the night the</p> <p>16 shooting occurred, could you have? Was one available?</p> <p>17      <b>A. Yes.</b></p> <p>18      Q. And was the Sage round available, if you'd wanted</p> <p>19 to take one?</p> <p>20      <b>A. I don't know.</b></p> <p>21      Q. Why is that, because they might have been out of</p> <p>22 them?</p> <p>23      <b>A. Correct.</b></p> <p>24      Q. And if you wanted to find out who would you ask,</p> <p>25 whether there was one available that night?</p> <p style="text-align: right;">56</p>
<p>1       it in your car, or was there something special about this</p> <p>2 night?</p> <p>3       <b>A. No, there's nothing special about that night.</b></p> <p>4       Q. Was it your habit or custom not to have it in</p> <p>5 your car?</p> <p>6       <b>A. Yes.</b></p> <p>7       Q. Okay. Why was that?</p> <p>8       <b>A. I just don't carry it.</b></p> <p>9       Q. No reason?</p> <p>10      <b>A. No.</b></p> <p>11      Q. Did you have the Sage with you the night of the</p> <p>12 shooting?</p> <p>13      <b>A. I did not.</b></p> <p>14      Q. Why not?</p> <p>15      <b>A. I didn't put it in my car.</b></p> <p>16      Q. Any reason?</p> <p>17      <b>A. I standard -- I don't put it in my car on a</b></p> <p>18 <b>standard practice.</b></p> <p>19      Q. Any reason why you don't do that as a standard</p> <p>20 practice?</p> <p>21      <b>A. I just don't.</b></p> <p>22      Q. Okay. Is that -- did you understand that it was</p> <p>23 your option or decision to make whether to put the shotgun</p> <p>24 with the bean bag round or the Sage with the projectile</p> <p>25 round in your car or not?</p> <p style="text-align: right;">55</p>	<p>1       <b>A. It would be whether one of the officers or one of</b></p> <p>2 <b>the sergeants had one, had them.</b></p> <p>3       Q. How many are there, to your knowledge?</p> <p>4       <b>A. I believe two.</b></p> <p>5       Q. And if you take it with you I guess that means,</p> <p>6 then, the other sergeants can't. So there's only two,</p> <p>7 right? Is that two per shift and you take it at the</p> <p>8 beginning of the shift and you return it at the end?</p> <p>9       <b>A. Correct.</b></p> <p>10      Q. How many shotguns with bean bags were available</p> <p>11 in April of this year?</p> <p>12      <b>A. I don't know.</b></p> <p>13      Q. Do you know approximately how many?</p> <p>14      <b>A. No.</b></p> <p>15      Q. But you know there were only two Sage rifles?</p> <p>16      <b>A. That's my belief.</b></p> <p>17      Q. Okay. Why do you believe that?</p> <p>18      <b>A. I think I've only seen two.</b></p> <p>19      Q. Okay. Did you have OC spray available on the</p> <p>20 night of the shooting?</p> <p>21      <b>A. Yes.</b></p> <p>22      Q. Did you have a Taser available on the night of</p> <p>23 the shooting?</p> <p>24      <b>A. Yes.</b></p> <p>25      Q. And did you have a Taser on your person?</p> <p style="text-align: right;">57</p>



<p>1 <b>A. No.</b></p> <p>2 Q. Where was it?</p> <p>3 <b>A. In my car.</b></p> <p>4 Q. Where was it located in your car?</p> <p>5 <b>A. In the trunk.</b></p> <p>6 Q. Did you have any other weapons in the trunk that</p> <p>7 night, that is, the night of the shooting?</p> <p>8 <b>A. No.</b></p> <p>9 Q. And was a canine at the scene at the time of the</p> <p>10 shooting?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And as far as lethal force went you had your</p> <p>13 pistol with you on your duty belt at the time of the</p> <p>14 shooting?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. And is that a revolver or an automatic?</p> <p>17 <b>A. Semi-automatic.</b></p> <p>18 Q. Do you know how many -- does it have a clip?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Do you know how many rounds it holds?</p> <p>21 <b>A. 13.</b></p> <p>22 Q. And did you have a shotgun available to you that</p> <p>23 night, the lethal force?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And where was that shotgun located in your</p> <p style="text-align: right;">58</p>	<p>1 <b>A. Yes.</b></p> <p>2 Q. If you had not been a member of the SWAT team,</p> <p>3 would you have had an AR 15 with you?</p> <p>4 <b>A. I very well could have.</b></p> <p>5 Q. So in other words -- well, before 2000 had you</p> <p>6 ever had an AR 15 with you in patrol duties?</p> <p>7 <b>A. No.</b></p> <p>8 Q. To your knowledge, did other patrol officers have</p> <p>9 AR 15s assigned to them for patrol duties?</p> <p>10 <b>A. When?</b></p> <p>11 Q. At any time. Was there some period of time when</p> <p>12 it started?</p> <p>13 <b>A. I don't know the specific year, but we started</b></p> <p>14 <b>training officers to qualify with the AR 15 or M16 rifles,</b></p> <p>15 <b>I would say, in approximately 2002, 2003.</b></p> <p>16 Q. Do you know who made that decision?</p> <p>17 <b>A. Command staff.</b></p> <p>18 Q. Do you know who the chief was at the time?</p> <p>19 <b>A. Mike Dunbagh.</b></p> <p>20 Q. I'm sorry. Mike who?</p> <p>21 <b>A. Dunbagh.</b></p> <p>22 Q. Dunbagh. How do you spell that?</p> <p>23 <b>A. D-u-n-b-a-g-h.</b></p> <p>24 MS. FOWLER: -b-a-g-h, I think.</p> <p>25 MR. SCOTT: Q. Was he the chief at the time of</p> <p style="text-align: right;">60</p>
<p>1 vehicle?</p> <p>2 <b>A. In a shotgun rack next to the driver and</b></p> <p>3 <b>passenger seat.</b></p> <p>4 Q. What kind of shotgun was that?</p> <p>5 <b>A. 12 gauge.</b></p> <p>6 Q. Do you know what type of load it had that night?</p> <p>7 <b>A. Double 00 buck.</b></p> <p>8 Q. Was that your choice?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Why did you choose the double 00 bulk?</p> <p>11 <b>A. That's standard.</b></p> <p>12 Q. And did you also have a rifle available to you</p> <p>13 that night?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Lethal force rifle? That's a yes. What kind of</p> <p>16 rifle was that?</p> <p>17 <b>A. NAR 15.</b></p> <p>18 Q. What's an NAR 15?</p> <p>19 <b>A. AR.</b></p> <p>20 Q. Oh, I'm sorry. AR 15. What's that?</p> <p>21 <b>A. It's a 223 caliber semi-automatic rifle.</b></p> <p>22 Q. And when did you first receive training in the AR</p> <p>23 15?</p> <p>24 <b>A. I believe it was year 2000.</b></p> <p>25 Q. Is that when you joined the SWAT team?</p> <p style="text-align: right;">59</p>	<p>1 the shooting in this case?</p> <p>2 <b>A. No.</b></p> <p>3 Q. Who was the chief in April of this year?</p> <p>4 <b>A. Ed Flint.</b></p> <p>5 Q. Is he still the chief?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. When did Ed Flint become chief?</p> <p>8 <b>A. I don't know. I think he's been there three</b></p> <p>9 <b>years and that's an approximate.</b></p> <p>10 Q. Okay. Were you trained to use the AR 15 in</p> <p>11 particular types of situations?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. What type of situations?</p> <p>14 <b>A. Situations that would necessitate the use of a</b></p> <p>15 <b>rifle.</b></p> <p>16 Q. And can you give me examples of what you're</p> <p>17 training was in that regard?</p> <p>18 <b>A. Incidents that involved possible harm or injury</b></p> <p>19 <b>to the victims, officers, the community.</b></p> <p>20 Q. Was the training any different from a handgun or</p> <p>21 was it just optional, you could use a rifle or handgun,</p> <p>22 take your pick, it's up to you?</p> <p>23 <b>A. It's where the officer individually deems that</b></p> <p>24 <b>situation to be appropriate under the circumstances given</b></p> <p>25 <b>at the time.</b></p> <p style="text-align: right;">61</p>

## DEPOSITION OF RICHARD CELLI

<p>1 Q. And as part of your training were you given</p> <p>2 examples of types of problems that can occur if the team</p> <p>3 work is not coordinated?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. And what examples were you taught?</p> <p>6 <b>A. Entering rooms without a partner, for instance,</b></p> <p>7 <b>is more hazardous than any tactically or multiple</b></p> <p>8 <b>partners.</b></p> <p>9 Q. And as part of your training as a member of the</p> <p>10 SWAT team were you taught that communication is critical?</p> <p>11 MS. FOWLER: I'm going to object that's an</p> <p>12 incomplete hypothetical, but if you can answer it as</p> <p>13 phrased.</p> <p>14 THE WITNESS: I can't answer it as phrased.</p> <p>15 There are...</p> <p>16 MR. SCOTT: Q. Did you get any training in</p> <p>17 communication in relation to being a member of the SWAT</p> <p>18 team?</p> <p>19 MS. FOWLER: I think that's vague and ambiguous</p> <p>20 as to what you mean by communication. It's overly broad.</p> <p>21 MR. SCOTT: Q. If you don't understand what I'm</p> <p>22 asking, then just say you don't understand.</p> <p>23 <b>A. There are many types of communication or times to</b></p> <p>24 <b>communicate and times not to.</b></p> <p>25 Q. What types of -- were you told why it can be</p> <p style="text-align: right;">66</p>	<p>1 MR. SCOTT: He can say he doesn't know.</p> <p>2 THE WITNESS: I don't know about the rest of the</p> <p>3 other officers training specifically.</p> <p>4 MR. SCOTT: Q. But you were the only SWAT team</p> <p>5 member there, correct.</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Who was in charge of the scene when you arrived</p> <p>8 at the Desantis -- the area of the Desantis house, then?</p> <p>9 <b>A. I can't say anybody was until I got there.</b></p> <p>10 Q. Do you know if anyone was before you got there?</p> <p>11 <b>A. When you're describing -- are you asking which</b></p> <p>12 <b>officers were in charge?</b></p> <p>13 Q. Yes, if anyone.</p> <p>14 <b>A. I don't think anyone was in charge of that scene</b></p> <p>15 <b>before I got there.</b></p> <p>16 Q. And why do you believe that?</p> <p>17 <b>A. Based upon the circumstances at the time.</b></p> <p>18 Q. And what was it about the circumstances that led</p> <p>19 you to believe that no one was in charge?</p> <p>20 <b>A. Officers were approaching and had not made</b></p> <p>21 <b>contact at that point at the residence or at the location.</b></p> <p>22 Q. What do you mean by that?</p> <p>23 <b>A. They had not made contact at the location and</b></p> <p>24 <b>were still approaching the location.</b></p> <p>25 Q. And by the location, you mean the area where the</p> <p style="text-align: right;">68</p>
<p>1 important to communicate?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And what were you taught in that regard?</p> <p>4 <b>A. Understanding scenes or surroundings.</b></p> <p>5 Q. When you say understanding scenes, what do you</p> <p>6 mean by that?</p> <p>7 <b>A. Maybe the dynamics of the call or incident.</b></p> <p>8 Q. And as of a member of the SWAT team were you</p> <p>9 trained to take the initiative in certain situations?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And at the scene where Mr. Desantis was shot and</p> <p>12 killed in April of this year were you the most trained</p> <p>13 officer at the scene?</p> <p>14 <b>A. I don't know.</b></p> <p>15 Q. Were there any other members of the SWAT team</p> <p>16 there?</p> <p>17 <b>A. No.</b></p> <p>18 Q. So to your knowledge, was there anyone there who</p> <p>19 had more training than you, in terms of handling this type</p> <p>20 of a situation?</p> <p>21 MS. FOWLER: Well, I'm going to object that calls</p> <p>22 for him to speculate. He doesn't know specifically about</p> <p>23 the training of the other officers involved and whether</p> <p>24 one type of training makes you better able to deal with a</p> <p>25 situation than another.</p> <p style="text-align: right;">67</p>	<p>1 shooting occurred?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. So you were there first?</p> <p>4 <b>A. No.</b></p> <p>5 Q. Who was there when you arrived?</p> <p>6 MS. FOWLER: I think it's vague and ambiguous as</p> <p>7 to where there is. You mean actually at the Desantis</p> <p>8 residence?</p> <p>9 MR. SCOTT: At the vicinity. At the vicinity, at</p> <p>10 the residence.</p> <p>11 Q. Who could you see?</p> <p>12 <b>A. Officer Menke, Officer Mann, Officer Ellsworth</b></p> <p>13 <b>were not at the residence but were approaching.</b></p> <p>14 Q. When you say at the residence, what do you mean</p> <p>15 by that? Are you talking about inside the house as</p> <p>16 opposed to in the driveway?</p> <p>17 <b>A. They were not to the residence yet.</b></p> <p>18 Q. And by residence you mean in the house or do you</p> <p>19 mean --</p> <p>20 <b>A. Well, in the proximity of the house.</b></p> <p>21 Q. When you arrived what did you -- where did you</p> <p>22 park your car in relation to the house and the driveway?</p> <p>23 <b>A. Southeast.</b></p> <p>24 Q. Okay. Did you see other police cars there when</p> <p>25 you arrived?</p> <p style="text-align: right;">69</p>

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1 **A. Yes.**  
2 Q. How many?  
3 **A. One was parking in front of me and one pulled in**  
4 **behind me.**  
5 Q. What information did you have when you arrived  
6 and before you got out of your car?  
7 **A. Regarding?**  
8 Q. What you were approaching.  
9 **A. That a subject was shooting inside the residence,**  
10 **that his wife had called, that there were two children in**  
11 **the house with him, and that the subject was still**  
12 **shooting while I was responding. I mean, there's a lot.**  
13 Q. Well, keep going.  
14 **A. That officers were on scene when the subject was**  
15 **still shooting, that the caller was either unable or**  
16 **unwilling to leave the residence.**  
17 Q. Anything else?  
18 **A. No.**  
19 Q. And did you pick this up by listening to radio  
20 traffic or from some other source?  
21 **A. Radio traffic.**  
22 Q. Did you understand that there was someone in the  
23 house who was giving information to someone outside the  
24 house, in other words, that whatever radio traffic you  
25 were getting was from a dispatcher or somebody who was

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1 talking to somebody inside the house?  
2 **A. I was aware that a dispatcher was on the phone**  
3 **with Mrs. Desantis.**  
4 Q. Okay. Did you have an opportunity to talk to  
5 Ms. Desantis if you wanted to?  
6 **A. No.**  
7 Q. Okay. Did you talk to the dispatcher who was  
8 talking to Mrs. Desantis?  
9 **A. No.**  
10 Q. Did you have any information about who was firing  
11 the weapon inside the house?  
12 **A. Mr. Desantis.**  
13 Q. Okay. Did you have any other information about  
14 him?  
15 **A. His name. I don't know if there was a date of**  
16 **birth. That's about it.**  
17 Q. Okay. Did you have information that anyone had  
18 been shot?  
19 **A. No.**  
20 Q. Was your understanding no one had been shot?  
21 **A. No one had been reported to have been shot yet.**  
22 Q. And did you understand it was a hostage  
23 situation?  
24 **A. No, not necessarily. There was no hostage or the**  
25 **use of the word hostage.**

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1 Q. And when you arrived at the -- if I use the term  
2 scene, do you understand I'm just talking about the area  
3 around the house?  
4 **A. Yes.**  
5 Q. Okay. The general area, the driveway and the  
6 vicinity of the house, if I say scene, we're on the same  
7 page?  
8 **A. Yes.**  
9 Q. Okay. So you arrived at the scene and what's the  
10 first thing you did when you arrived?  
11 **A. I retrieved my rifle from the trunk.**  
12 Q. From where?  
13 **A. From the trunk of the car.**  
14 Q. And was the Taser also available at that time?  
15 **A. Yes.**  
16 Q. Could you have taken the Taser and the rifle?  
17 **A. Yes.**  
18 Q. And are you trained to sling a rifle and use a  
19 Taser?  
20 **A. At times, depending on the circumstances.**  
21 Q. And you decided -- why did you decide to take the  
22 rifle?  
23 **A. Mr. Desantis was shooting inside the residence.**  
24 Q. Okay. And that's the reason you took the rifle?  
25 **A. Yes.**

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1 Q. And why did you not take the Taser?  
2 **A. Because Mr. Desantis was shooting in the**  
3 **residence.**  
4 Q. And when you got the rifle from your trunk,  
5 what's the next thing you did?  
6 **A. Met up with Officer Jones and Sergeant Soares at**  
7 **our vehicles.**  
8 Q. Where were their vehicles in relation to yours?  
9 **A. Officer Jones was parked right in front of me to**  
10 **the west of me, Sergeant Soares to the east of me behind**  
11 **me.**  
12 Q. Did you arrive at approximately the same time  
13 with Jones and Soares?  
14 **A. Yes.**  
15 Q. Did you essentially all drive there together?  
16 **A. Sergeant Soares and I did.**  
17 Q. Where were you and Sergeant Soares when you got  
18 the call?  
19 **A. Inside the police department.**  
20 Q. What were you doing?  
21 **A. Approving reports.**  
22 Q. And what shift were you on that night?  
23 **A. Graveyard.**  
24 Q. And what time did you come on duty?  
25 **A. 7:00 p.m.**

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<p>1 Q. Okay. And when did your shift end?</p> <p>2 <b>A. Normally at 8:00 a.m.</b></p> <p>3 Q. Were you on a 4/10?</p> <p>4 <b>A. No 3/12.</b></p> <p>5 Q. 3/12. And what three days of the week did you</p> <p>6 work at that time?</p> <p>7 <b>A. Friday, Saturday, Sunday.</b></p> <p>8 Q. Did you choose to work those three nights?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Were there other nights that you wanted to choose</p> <p>11 but because you didn't have seniority you got Friday,</p> <p>12 Saturday, Sunday?</p> <p>13 <b>A. Correct.</b></p> <p>14 Q. How many officers were you supervising that</p> <p>15 night?</p> <p>16 <b>A. I don't know.</b></p> <p>17 Q. Do you know approximately how many?</p> <p>18 <b>A. Approximately 8 to 10.</b></p> <p>19 Q. And were you responsible for a particular part of</p> <p>20 Santa Rosa that night, or did you and another sergeant</p> <p>21 kind of jointly have responsibilities for the whole city,</p> <p>22 or were there sectors, or anything like that?</p> <p>23 <b>A. We were responsible for the whole city.</b></p> <p>24 Q. And who were the other sergeants on duty that</p> <p>25 night with you?</p> <p style="text-align: right;">74</p>	<p>1 <b>A. Menke, yes.</b></p> <p>2 Q. He was at the briefing?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. All right. Was Sergeant Soares at the briefing?</p> <p>5 <b>A. No.</b></p> <p>6 Q. Why is that?</p> <p>7 <b>A. It wasn't his shift.</b></p> <p>8 Q. When was his shift over, do you know?</p> <p>9 <b>A. 2:00 a.m. Wait. No. Sorry. 2:30 a.m.</b></p> <p>10 Q. Now, this was a Sunday night, right?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. Or early Monday morning? Had it been a quiet</p> <p>13 night?</p> <p>14 MS. FOWLER: Vague and ambiguous as to what you</p> <p>15 mean by quiet, but if you can answer, go ahead.</p> <p>16 THE WITNESS: Recall it being busy.</p> <p>17 MR. SCOTT: Q. Okay. It was Easter Sunday,</p> <p>18 right?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. What do you mean by busy, a lot of calls?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And you responded to a number of calls prior to</p> <p>23 going to the Desantis residence?</p> <p>24 <b>A. I don't know.</b></p> <p>25 Q. Do you recall any calls you responded to that</p> <p style="text-align: right;">76</p>
<p>1 <b>A. Sergeant Soares, Sergeant Nick Sensley.</b></p> <p>2 Q. Anything else?</p> <p>3 <b>A. No, that's it.</b></p> <p>4 Q. Okay. Three of them. Was there a lineup at the</p> <p>5 beginning of that shift?</p> <p>6 <b>A. Briefing?</b></p> <p>7 Q. Yeah, briefing.</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Did you count the officers that were at the</p> <p>10 briefing?</p> <p>11 <b>A. I don't know.</b></p> <p>12 Q. Was Officer Mann at the briefing?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Officer Jones at the briefing?</p> <p>15 <b>A. No.</b></p> <p>16 Q. Was officer -- was that because he came on duty</p> <p>17 later?</p> <p>18 <b>A. Before.</b></p> <p>19 Q. Okay. What about officer Ellsworth, was he at</p> <p>20 the briefing?</p> <p>21 <b>A. No.</b></p> <p>22 Q. And why is that?</p> <p>23 <b>A. Before. Came on before.</b></p> <p>24 Q. All right. And what about Officer -- is it</p> <p>25 Menke?</p> <p style="text-align: right;">75</p>	<p>1 night before Desantis?</p> <p>2 <b>A. No.</b></p> <p>3 Q. Now, you get to the scene you get out of your</p> <p>4 car. You go to the trunk, you get your rifle, and then</p> <p>5 you meet with Sergeant Soares and Officer Jones, correct?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. And where did that meeting take place?</p> <p>8 <b>A. To the right or in the middle of the street from</b></p> <p>9 <b>my patrol car.</b></p> <p>10 Q. How long did that meeting last?</p> <p>11 <b>A. Approximately ten seconds.</b></p> <p>12 Q. And what was said?</p> <p>13 <b>A. Sergeant Soares advised me that he had the Sage</b></p> <p>14 <b>less lethal and I described where I wanted to approach the</b></p> <p>15 <b>residence.</b></p> <p>16 Q. What did you say?</p> <p>17 <b>A. I pointed out the southeast corner of the</b></p> <p>18 <b>driveway.</b></p> <p>19 Q. Was this your attempt to establish a plan, a</p> <p>20 tactical plan?</p> <p>21 <b>A. The start of one, yes.</b></p> <p>22 Q. Okay. And so at this point your plan was to do</p> <p>23 what exactly?</p> <p>24 <b>A. Get on scene, locate where the residence and the</b></p> <p>25 <b>subjects involved were, and resolve the situation.</b></p> <p style="text-align: right;">77</p>

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1 Q. What do you mean by resolve?  
 2 **A. To stop the shooting, protect the family, protect**  
 3 **the citizens, protect the neighborhood.**  
 4 Q. When you say protect the family, what do you mean  
 5 by that? Did that include Mr. Desantis or not?  
 6 **A. Yes.**  
 7 Q. Okay. Did you understand if there were any  
 8 children in the house?  
 9 **A. Two.**  
 10 Q. Do you know how old they were?  
 11 **A. I believe 10 and 2.**  
 12 Q. When you talked initially to Sergeant Soares and  
 13 Officer Jones did they provide you any new information  
 14 that you did not already have?  
 15 **A. No.**  
 16 Q. And did you tell them what the plan was?  
 17 **A. The basic plan of approach, where the approach**  
 18 **should come from, yes.**  
 19 Q. Was the idea that the three of you would approach  
 20 together from the same general direction?  
 21 **A. Yes.**  
 22 Q. And what's the next thing you did after this  
 23 conversation with Sergeant Soares and Officer Jones?  
 24 MS. FOWLER: Soares.  
 25 MR. SCOTT: Q. Soares.

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1 **A. Observed Officers Menke, Mann and Ellsworth**  
 2 **approaching the southwest corner of the driveway.**  
 3 Q. When you say approaching, you mean they were  
 4 walking toward it?  
 5 **A. Yes.**  
 6 Q. And what's the next thing you did?  
 7 **A. Observed Officer Menke flashing his flashlight at**  
 8 **me to get my attention of where his location was.**  
 9 Q. What was the lighting conditions at the time,  
 10 speaking of flashlights?  
 11 **A. Dark. I think there was one street light and I**  
 12 **don't know which side of the street.**  
 13 Q. And were any of the police cars positioned so as  
 14 to shine lights from their cars into the -- towards the  
 15 house or the driveway?  
 16 **A. No.**  
 17 Q. Okay. Tactically did you consider doing that?  
 18 **A. Yes.**  
 19 Q. And tactically did you think it was a good idea?  
 20 **A. No.**  
 21 Q. Why not?  
 22 **A. I didn't want to give up my position.**  
 23 Q. What do you mean by that?  
 24 **A. I didn't want to be seen.**  
 25 Q. All right. So you were using the dark for

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1 concealment purposes; is that the idea?  
 2 **A. Yes.**  
 3 Q. And that was a tactical decision you made, to use  
 4 the dark as concealment?  
 5 **A. Initially.**  
 6 Q. Did that change at some point?  
 7 **A. Yes.**  
 8 Q. When did it change?  
 9 **A. When I exposed myself to Mr. Desantis.**  
 10 Q. Why did you do that?  
 11 **A. So he could identify who I was as the police.**  
 12 Q. And at that point did you feel it would have been  
 13 better to have more lighting?  
 14 MS. FOWLER: Object as vague and ambiguous as to  
 15 better. Calls for speculation.  
 16 MR. SCOTT: Q. I thought I understood you to say  
 17 you thought the dark was good for concealment purposes up  
 18 to a certain point. And then you thought that being dark  
 19 was not of benefit to you. Did I misunderstand you?  
 20 MS. FOWLER: It misstates his testimony. He said  
 21 being under cover -- or being in a position of cover was  
 22 initially beneficial and that was what changed, not the  
 23 lighting conditions.  
 24 MR. SCOTT: Q. Well, I'm just asking questions.  
 25 I'm just trying to understand what you're saying. So I'm

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1 just trying to understand if at some point you thought  
 2 tactically it would have been better to have more light  
 3 instead of darkness?  
 4 **A. I don't know if any more light was needed in the**  
 5 **driveway.**  
 6 Q. Why do you say that?  
 7 **A. I could see the scene and Mr. Desantis could see**  
 8 **me.**  
 9 Q. How do you know he could see you?  
 10 **A. He turned and looked at me.**  
 11 Q. But how do you know he could see you, just  
 12 because he looked in your direction? You mean it was  
 13 light enough for him to see you?  
 14 **A. Yes.**  
 15 Q. And it was light enough for you to see him?  
 16 **A. Yes.**  
 17 Q. Where was the light coming from?  
 18 **A. There was a street light somewhere in the**  
 19 **vicinity of the driveway and there was light emitting from**  
 20 **the Desantis residence.**  
 21 Q. Now, when you first saw Mr. Desantis, were you in  
 22 the vicinity of the driveway?  
 23 **A. Yes.**  
 24 Q. In the southeast corner of the driveway?  
 25 **A. Yes.**

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<p>1 Q. Approximately how far were you from the front 2 door of his house where you saw the light emanating from? 3 <b>A. Approximately 18 to 20 yards.</b> 4 Q. And did you see anyone else in the vicinity of 5 the house? 6 <b>A. Yes.</b> 7 Q. Who did you see? 8 <b>A. A female holding, approximately, a two-year-old.</b> 9 Q. Where was she in relation to the house? 10 <b>A. Standing on the steps.</b> 11 Q. Did you hear her say anything? 12 <b>A. No.</b> 13 Q. Did you ever hear her say anything before the 14 shots were fired? 15 <b>A. Not that I recall.</b> 16 Q. Now, when you first saw Mr. Desantis, where was 17 he in relation to his wife and child? 18 <b>A. Off the steps a couple of yards south towards my</b> 19 <b>direction.</b> 20 Q. And was he walking toward you? 21 <b>A. No.</b> 22 Q. Was he walking? 23 <b>A. No.</b> 24 Q. What was he doing? 25 <b>A. Standing.</b></p> <p style="text-align: right;">82</p>	<p>1 Q. You could see his hands? 2 <b>A. Yes.</b> 3 Q. When he was standing, I guess, a few feet from 4 his wife; is that correct? 5 <b>A. Yes.</b> 6 Q. And was he facing towards her? 7 <b>A. No, he was looking towards the direction of</b> 8 <b>Officer Menke.</b> 9 Q. Officer Menke was to your left? 10 <b>A. Yes.</b> 11 Q. Approximately how many feet? 12 <b>A. From me?</b> 13 Q. Yes. 14 <b>A. 15 to 20 feet.</b> 15 Q. And where was Sergeant Soares at this time? 16 <b>A. To my left.</b> 17 Q. Approximately how far? 18 <b>A. On my shoulder.</b> 19 Q. And where was Officer Jones at this time? 20 <b>A. On my left.</b> 21 Q. To the left of Sergeant Soares? 22 <b>A. That or the two were switched, but they were both</b> 23 <b>in close proximity to my left.</b> 24 Q. How much distance was there -- well, let me say 25 it another way. Immediately to your left was Sergeant</p> <p style="text-align: right;">84</p>
<p>1 Q. And what was he wearing? 2 <b>A. Baggy jeans, no shirt.</b> 3 Q. No shirt? 4 <b>A. No shirt.</b> 5 Q. You're sure about that? 6 <b>A. Yes.</b> 7 Q. When you say baggy jeans, what do you mean by 8 that? How baggy? 9 <b>A. Loose fitting.</b> 10 Q. Were they kind of hanging down towards his hips? 11 <b>A. They were not hanging off his hips.</b> 12 Q. Oh. Not like the young kids we see these days, 13 he didn't have to hold his pants up with a hand? 14 <b>A. No.</b> 15 Q. Not that baggy? 16 <b>A. No.</b> 17 Q. All right. And it appeared to be blue jeans? 18 <b>A. Yes.</b> 19 Q. And was he wearing a hat? 20 <b>A. No.</b> 21 Q. Was he wearing shoes or anything on his feet? 22 <b>A. I don't think so.</b> 23 Q. Did he have anything in his hands, either one of 24 his hands? 25 <b>A. No.</b></p> <p style="text-align: right;">83</p>	<p>1 Soares and Officer Jones. One -- you forget which one was 2 closest to you, but they were close to you to your left, 3 correct? 4 <b>A. Yes.</b> 5 Q. And then there was some distance, some space, and 6 then there was Officer Menke? 7 <b>A. Yes.</b> 8 Q. And were there any other officers there at the 9 time that you could see? 10 MS. FOWLER: At what time? When he first saw -- 11 MR. SCOTT: Yes. 12 MS. FOWLER: -- Mr. Desantis? 13 MR. SCOTT: Q. Now, he's there and you see 14 Mr. Desantis standing not far from his wife near the front 15 door of the house? 16 <b>A. Yes, Officer Mann and Officer Ellsworth.</b> 17 Q. And where were they in relation to you? 18 <b>A. To the right of Officer Menke.</b> 19 Q. So Officer Menke would have been the furthest to 20 the left or to the west, and you were the furthest to the 21 east? 22 <b>A. No.</b> 23 MS. FOWLER: That misstates his testimony. 24 MR. SCOTT: Q. Okay. So you're facing 25 Mr. Desantis and you're in the southeast corner?</p> <p style="text-align: right;">85</p>

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1 **A. Yes.**  
 2 Q. Okay. And everyone else is to your left or to  
 3 the west?  
 4 **A. Yes.**  
 5 Q. Okay. And the order would have been either --  
 6 next to you would have been either Soares or Jones?  
 7 **A. Yes.**  
 8 Q. Correct? And then it would have been Ellsworth,  
 9 Mann and Menke or Mann, Ellsworth and Menke?  
 10 **A. Ellsworth was south of Menke, Mann was south of**  
 11 **Menke, Mann was in between Ellsworth and Menke.**  
 12 Q. So in other words, when you say south, you mean  
 13 behind?  
 14 **A. No, in a straight line.**  
 15 Q. Okay. So basically there's six officers who are  
 16 kind of in a line?  
 17 **A. On opposite sides.**  
 18 Q. When you say opposite sides, what do you mean?  
 19 **A. Of the driveway. There's three on one side,**  
 20 **three on the other.**  
 21 Q. And a gap between the two groups of three?  
 22 **A. Yes.**  
 23 Q. And how much space between the two groups of  
 24 three?  
 25 **A. Approximately 15 to 20 feet.**

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1 Q. Okay. Was this part of a plan?  
 2 **A. No.**  
 3 Q. Now at this point, for tactical reasons, did you  
 4 need a rifle?  
 5 **A. Yes.**  
 6 Q. Why?  
 7 **A. Mr. Desantis had been shooting and I didn't know**  
 8 **if Mr. Desantis was still armed or --**  
 9 Q. Okay. Go ahead.  
 10 **A. Or what continued threat was going on.**  
 11 Q. All right. And at this point did -- who was in  
 12 charge of the scene?  
 13 **A. I was.**  
 14 Q. So you took command?  
 15 **A. Yes.**  
 16 Q. And what orders did you give the other officers?  
 17 MS. FOWLER: At what point in time?  
 18 MR. SCOTT: Q. This point. The six of you are  
 19 there, Mr. Desantis is down by the house in the vicinity  
 20 of his wife, standing there.  
 21 **A. I ordered Officer Menke to start speaking to him.**  
 22 Q. And did you tell Officer Menke what to say?  
 23 **A. I don't know my specific words, but I believe**  
 24 **they were to call him out.**  
 25 Q. Why did you order Officer Menke to do that?

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1 **A. Mr. Desantis was facing his direction and Officer**  
 2 **Menke had a better view of the driveway and residence.**  
 3 Q. And why do you believe that?  
 4 **A. Based upon where Officer Menke was as opposed to**  
 5 **myself.**  
 6 Q. And why do you believe he had a better view?  
 7 Because you had an obstructed view, or he was closer? Why  
 8 was it better?  
 9 **A. Officer Menke was facing the right side of the**  
 10 **four-plex toward the Desantis home, as opposed to where I**  
 11 **was. I was facing the left side of the buildings.**  
 12 Q. Okay. So at this point were you in a position of  
 13 cover?  
 14 **A. Concealment.**  
 15 Q. What was concealing you?  
 16 **A. A green garbage can.**  
 17 Q. Okay. Why didn't you take a position of cover?  
 18 **A. I wouldn't have been able to see the scene.**  
 19 Q. Have you ever used your vehicle as cover?  
 20 **A. Yes.**  
 21 Q. Why didn't you use your vehicle as cover in this  
 22 situation?  
 23 **A. I didn't feel it was appropriate to take a**  
 24 **vehicle into the scene, not knowing the circumstances.**  
 25 Q. Okay. What were you afraid was going to happen

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1 to the vehicle?  
 2 MS. FOWLER: Objection. Assumes facts not in  
 3 evidence. He didn't say he was afraid anything would  
 4 happen to the vehicle.  
 5 MR. SCOTT: Q. Okay. Were you afraid something  
 6 would happen to the vehicle?  
 7 **A. For safety reasons I wasn't about to drive into a**  
 8 **scene where a subject was shooting.**  
 9 Q. Okay. For safety reasons you didn't think you  
 10 needed cover?  
 11 **A. I made the choice of being able to see, as**  
 12 **opposed to not being able to see.**  
 13 Q. Okay. And did you tell any of the other officers  
 14 there to take a position of cover?  
 15 **A. No.**  
 16 Q. Why not?  
 17 **A. They were taking their own precautions. Officer**  
 18 **Menke was at the corner of the -- southwest corner of the**  
 19 **building using that as cover.**  
 20 Q. So Officer Menke was using a building for cover?  
 21 **A. Yes.**  
 22 Q. Were any of the other officers there using  
 23 anything for cover?  
 24 **A. I can't speak to what their views were from that**  
 25 **side, so I don't know if they were viewing from a point of**

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<p>1 you feel like doing?</p> <p>2 <b>A. No.</b></p> <p>3 Q. Okay. So have you been trained in certain</p> <p>4 situations where it might be more appropriate to</p> <p>5 negotiate?</p> <p>6 <b>A. Under certain circumstances.</b></p> <p>7 Q. And would that include a 5150 situation?</p> <p>8 <b>A. Depending on the circumstances.</b></p> <p>9 Q. What other situations have you been trained to</p> <p>10 try to negotiate instead of make commands?</p> <p>11 <b>A. It depends on the situation. There are numerous.</b></p> <p>12 Q. Well, you've been trained to handle dozens of</p> <p>13 situations, right?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Of those dozens of situations tell me three or</p> <p>16 four situations where you've been trained to negotiate.</p> <p>17 MS. FOWLER: Object. Vague and ambiguous. It's</p> <p>18 an incomplete hypothetical. There is no set situation.</p> <p>19 Everything is an evolving situation and circumstances</p> <p>20 change.</p> <p>21 MR. SCOTT: Q. So that's your training,</p> <p>22 everything is evolving, situations change, so do whatever</p> <p>23 you want to do, or are you trained to handle particular</p> <p>24 types of situations?</p> <p>25 MS. FOWLER: I'm going to object to that. Don't</p>	<p>1 <b>A. I don't know the legal term of suicide by cop.</b></p> <p>2 Q. What training have you received about it?</p> <p>3 <b>A. It's when the subject uses his actions to get a</b></p> <p>4 <b>specific response or actions by police in an attempt to</b></p> <p>5 <b>take his or her life.</b></p> <p>6 Q. Do you think this case was suicide by cop?</p> <p>7 <b>A. I don't know.</b></p> <p>8 Q. Have you been trained on how to deal with those</p> <p>9 types of situations referred to as suicide by cop?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And how are you trained to respond to those types</p> <p>12 of situations?</p> <p>13 <b>A. It's based upon the dynamic of those situations.</b></p> <p>14 Q. Okay. Do you have training regarding any</p> <p>15 specific types of situations or scenarios?</p> <p>16 <b>A. It would depend on where you were, the actions of</b></p> <p>17 <b>the subject, your surrounding, a multitude of things. It</b></p> <p>18 <b>all changes.</b></p> <p>19 Q. Have you received training about any particular</p> <p>20 scenarios?</p> <p>21 <b>A. Regarding?</b></p> <p>22 Q. Suicide by cop.</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. And what scenarios have you had training in?</p> <p>25 <b>A. Subjects feigning assault or demanding that you</b></p>
<p>1 answer it.</p> <p>2 MR. SCOTT: Q. Are you trained based on</p> <p>3 scenarios?</p> <p>4 <b>A. Sometimes.</b></p> <p>5 Q. And you've received training in scenarios</p> <p>6 regarding negotiating as opposed to using commands?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. What -- give me example of scenarios you've been</p> <p>9 trained in to negotiate instead of using commands?</p> <p>10 <b>A. There are numerous.</b></p> <p>11 Q. Okay. Tell me about -- of the numerous, tell me</p> <p>12 four or five.</p> <p>13 <b>A. There are all types of situations which speaking</b></p> <p>14 <b>to somebody under certain circumstances, you can negotiate</b></p> <p>15 <b>or not, depending on the dynamics of that situation.</b></p> <p>16 Q. And what scenarios have you been taught?</p> <p>17 <b>A. Getting somebody to comply with commands,</b></p> <p>18 <b>suicidal subjects. The list goes on.</b></p> <p>19 Q. Okay. Now, you say suicidal subjects. Do you</p> <p>20 have training in dealing with suicidal subjects?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Do you have training in dealing with situations</p> <p>23 referred to as suicide by cop?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. What is suicide by cop?</p>	<p>1 <b>shoot them.</b></p> <p>2 Q. How are you trained to respond to those</p> <p>3 situations?</p> <p>4 <b>A. To deal with it based upon the situation at the</b></p> <p>5 <b>time, based upon the dynamics around you.</b></p> <p>6 Q. Have you ever heard the term sympathetic gunfire?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Have you heard that in training?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. What do you understand that term means?</p> <p>11 <b>A. When gunfire is fired after an initial shot based</b></p> <p>12 <b>upon the initial shot.</b></p> <p>13 Q. And what do you mean by that? You mean somebody</p> <p>14 hears a shot fired and they just react by shooting?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. And did you have training in -- to avoid doing</p> <p>17 that?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And how are you trained to avoid doing that?</p> <p>20 <b>A. We are trained to individually assess danger or</b></p> <p>21 <b>threats based upon our individual thoughts.</b></p> <p>22 Q. And have you --</p> <p>23 <b>A. And observations.</b></p> <p>24 Q. And have you heard the term shoot and assess?</p> <p>25 <b>A. Yes.</b></p>

1 sock rounds available or another Sage available, you just  
2 don't know, correct?  
3 MS. FOWLER: He doesn't know whether he checked  
4 or whether there were ones available?  
5 MR. SCOTT: Q. Well, you didn't check, right?  
6 **A. Correct.**  
7 Q. Did you know Sergeant Soares was bringing the  
8 Sage to the scene before you got there, or did you  
9 discover that when you got there?  
10 **A. When I got there.**  
11 Q. And I take it when you -- that first conversation  
12 you had with him and Officer Jones at the scene, you  
13 didn't ask either one of them if they had a shotgun with  
14 the sock rounds available; is that correct?  
15 **A. Correct.**  
16 Q. And as part of the plan did you ask any one of  
17 the officers present to have a Taser available?  
18 **A. No.**  
19 Q. And before shots were fired in this case did you  
20 have a plan with Officer Ellsworth, in terms when and if  
21 the dog would be used?  
22 **A. No.**  
23 Q. Could you have ordered Officer Ellsworth to put  
24 the dog on Mr. Desantis when you first got there?  
25 **A. No.**

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1 Q. Why not?  
2 **A. It's not my call.**  
3 Q. Whose call is it?  
4 **A. Officer Ellsworth.**  
5 Q. Okay. And so if I understand you correctly, as  
6 the supervisor in command at the scene, you did not have  
7 the authority to order Officer Ellsworth to put the dog on  
8 Mr. Desantis; is that correct?  
9 **A. I could have given that order. Whether that**  
10 **order would be right or wrong would be in question.**  
11 Q. What do you mean by that?  
12 **A. I can order officers to do things; take a report,**  
13 **send their dog, to drive slower, a multitude of things.**  
14 Q. Right. And if they don't follow your order --  
15 MS. FOWLER: He didn't finish his answer.  
16 MR. SCOTT: Q. I'm sorry.  
17 **A. Officers have to respond and do things that are**  
18 **lawful and they have to use their own beliefs on what is**  
19 **reasonable at the time to conduct themselves.**  
20 Q. Okay. Do you think it would have been an  
21 unlawful order for you to order Officer Ellsworth to put  
22 the dog on Mr. Desantis?  
23 MS. FOWLER: When they first arrived on the  
24 scene?  
25 MR. SCOTT: Q. Yes.

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1 **A. I don't know.**  
2 Q. Well, what would you need to know in order to  
3 answer the question?  
4 **A. More about the scene.**  
5 Q. Would you need -- would it depend on whether  
6 Mr. Desantis had a gun or not?  
7 **A. It would depend on a multitude of things at the**  
8 **scene, the dynamics, who was where.**  
9 Q. Well, in the situation you described when you got  
10 there, and you said you saw Mr. Desantis standing, I  
11 guess, from where you were positioned in the vicinity --  
12 in front of his wife and his child, not far from the front  
13 of the house or the front door of the house, now -- and  
14 you didn't know if he had a gun, correct?  
15 **A. I assumed he did.**  
16 Q. You assumed he had a gun. And you knew that  
17 shots had recently been fired, right?  
18 **A. Yes.**  
19 Q. And, now, at that point, do you think it would  
20 have been a lawful order to have Officer Ellsworth put the  
21 dog on Mr. Desantis?  
22 **A. It's -- I -- go ahead.**  
23 MS. FOWLER: Let me just -- I would object to the  
24 extent that the term lawful is vague and ambiguous and  
25 calls for a legal conclusion. If you can answer the

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1 question, go ahead and answer it.  
2 MR. SCOTT: Q. It was your term. I'll take the  
3 lawful out of it. Do you think it would have been  
4 appropriate?  
5 **A. No.**  
6 Q. Why not?  
7 **A. Because Patricia Desantis -- or the female. I**  
8 **didn't know it was Patricia -- and the child were in close**  
9 **proximity to Mr. Desantis.**  
10 Q. And, what, you were afraid the dog might attack  
11 them?  
12 **A. Yes.**  
13 Q. So getting back to where we were, and you have  
14 ordered Officer Menke to make commands, do you know what  
15 commands he made?  
16 **A. I don't know his specific words.**  
17 Q. Do you recall anything about what he said?  
18 **A. He ordered Mr. Desantis towards him, towards**  
19 **Officer Menke.**  
20 Q. Is that tactically something you wanted him to  
21 do?  
22 **A. Yes.**  
23 Q. Why?  
24 **A. I wanted him to gain compliance of Mr. Desantis.**  
25 Q. What do you mean by that?

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<p>1 Q. And how did they do it?</p> <p>2 <b>A. By creating a dialogue and having that person</b></p> <p>3 <b>talk back to them.</b></p> <p>4 Q. And would it be fair to say these were 5150</p> <p>5 situations?</p> <p>6 <b>A. The ones that I've described for you just --</b></p> <p>7 Q. Yes, the ones that you've described for me.</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. And, now, based on your training of suicide by</p> <p>10 cop -- have you heard it referred to as SBC, by the way?</p> <p>11 <b>A. No.</b></p> <p>12 Q. Have you gotten any training on the dynamics</p> <p>13 of -- what the dynamics would be in a suicide by cop</p> <p>14 situation?</p> <p>15 <b>A. Describe dynamics.</b></p> <p>16 Q. Have you heard that term used in -- as part of</p> <p>17 your training in relation to suicide by cop?</p> <p>18 <b>A. No.</b></p> <p>19 Q. Have you received any training in developing a</p> <p>20 plan to deal with situations to take into account a</p> <p>21 possible suicide by cop situation?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And what training have you received in that</p> <p>24 regard?</p> <p>25 <b>A. To use tactics to determine what the threat is,</b></p> <p style="text-align: right;">114</p>	<p>1 intoxicated or psychotic people are doing is to -- maybe</p> <p>2 for the purpose of being shot or harmed?</p> <p>3 <b>A. I don't know.</b></p> <p>4 Q. Okay. And you don't -- haven't had any training</p> <p>5 in that regard? In other words, why would an unarmed</p> <p>6 person act out to cause him or herself to get seriously</p> <p>7 injured or killed; you don't have any training about that?</p> <p>8 <b>A. We train on all types of scenarios.</b></p> <p>9 Q. Including this?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Okay. Now, I think we were at this situation</p> <p>12 where Mr. Desantis was going in the direction of Officer</p> <p>13 Menke; is that correct?</p> <p>14 <b>A. Away.</b></p> <p>15 Q. When you started giving the commands, at some</p> <p>16 point, reluctantly, Mr. Desantis started going in his</p> <p>17 direction?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And at that point were the officers that you</p> <p>20 mentioned still in the same positions or had people moved</p> <p>21 or changed their positions?</p> <p>22 <b>A. The same position.</b></p> <p>23 Q. Was everybody standing?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And were you aiming your rifle in the direction</p> <p style="text-align: right;">116</p>
<p>1 <b>how to assess the threat, and stop the threat.</b></p> <p>2 Q. Okay. Without someone dying?</p> <p>3 <b>A. If at all possible.</b></p> <p>4 Q. Is that the goal?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Now, is it your understanding one of the dynamics</p> <p>7 of suicide by cops is having an audience present?</p> <p>8 MS. FOWLER: I object. He's already told you he</p> <p>9 hasn't heard the term used in his training.</p> <p>10 MR. SCOTT: Q. Okay. Well, one of the elements</p> <p>11 of suicide by cops, is that having an audience present?</p> <p>12 <b>A. No. I don't know.</b></p> <p>13 Q. Have you had any training regarding the idea of</p> <p>14 someone posturing in a suicide by cop situation?</p> <p>15 <b>A. Not specifically suicide by cop.</b></p> <p>16 Q. But you're familiar with the term posturing?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. What does that term mean to you, based on your</p> <p>19 training?</p> <p>20 <b>A. Acting out to get a response.</b></p> <p>21 Q. Okay. And has it been your experience that</p> <p>22 sometimes people who are maybe intoxicated or psychotic,</p> <p>23 crazy, may act out to get a response?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And have you been trained that the response that</p> <p style="text-align: right;">115</p>	<p>1 of Mr. Desantis?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Why?</p> <p>4 <b>A. He was a threat.</b></p> <p>5 Q. Okay. And to your knowledge, was Sergeant Soares</p> <p>6 aiming his -- what's it called, Sage? Was he aiming his</p> <p>7 Sage in the direction of Mr. Desantis?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. And did you observe the other officers at the</p> <p>10 scene -- did they have their weapons drawn?</p> <p>11 <b>A. Officer Mann and Officer Menke did.</b></p> <p>12 Q. What about Officer Ellsworth?</p> <p>13 <b>A. I don't know.</b></p> <p>14 Q. What about Officer Jones?</p> <p>15 <b>A. I don't know.</b></p> <p>16 Q. And you believe Mr. Desantis could have seen you?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. So at this point Mr. Desantis should have been</p> <p>19 able to see at least four officers pointing rifles or</p> <p>20 handguns at him and two other officers, including a police</p> <p>21 dog, all standing kind of in front of him, right?</p> <p>22 <b>A. I know Mr. Desantis could see myself, or looking</b></p> <p>23 <b>at me, as well as looking in the direction of Officer</b></p> <p>24 <b>Menke, Officer Mann and Officer Ellsworth.</b></p> <p>25 Q. Okay. I mean, you don't know what he saw, but he</p> <p style="text-align: right;">117</p>

<p>1 certainly had an opportunity to see all the officers there</p> <p>2 and see what you saw?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Can you describe how Mr. Desantis moved in the</p> <p>5 direction of Officer Menke?</p> <p>6 <b>A. He stepped from the area of the porch and walked</b></p> <p>7 <b>southwest approximately three to four steps towards</b></p> <p>8 <b>Officer Menke's direction.</b></p> <p>9 Q. You say he walked. Was it a slow pace, a normal</p> <p>10 pace, how would you describe it?</p> <p>11 <b>A. I can't. I don't know.</b></p> <p>12 Q. So he took about three or four steps?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. And then what did he do?</p> <p>15 <b>A. Officer Menke ordered him to put his knees on the</b></p> <p>16 <b>ground.</b></p> <p>17 Q. Is this something you wanted Officer Menke to</p> <p>18 order him to do?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Did you tell Officer Menke to order him to do</p> <p>21 that?</p> <p>22 <b>A. No.</b></p> <p>23 Q. Did Officer Menke order him to stop after he took</p> <p>24 three or four steps and to get on the ground, or did he do</p> <p>25 it without being ordered to do it?</p> <p style="text-align: right;">118</p>	<p>1 <b>to put his hands out on the ground in front of him.</b></p> <p>2 Q. Did he do that?</p> <p>3 <b>A. After repeated commands.</b></p> <p>4 Q. And so at some point you saw his hands in the</p> <p>5 air?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Did you see anything in his hands?</p> <p>8 <b>A. No.</b></p> <p>9 Q. And could you see his feet?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And was he barefoot?</p> <p>12 <b>A. I believe so. I don't know.</b></p> <p>13 Q. And then -- well, did you ever see a weapon</p> <p>14 anywhere on his person or near his person before he was</p> <p>15 shot?</p> <p>16 <b>A. No.</b></p> <p>17 Q. Now, did he then put his hands on the ground?</p> <p>18 <b>A. Eventually.</b></p> <p>19 Q. And how long did that take? Several commands?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Was Officer Menke making all the commands?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Did anyone else -- any other officers say</p> <p>24 anything during this period of time when Officer Menke is</p> <p>25 making commands?</p> <p style="text-align: right;">120</p>
<p>1 <b>A. I don't know.</b></p> <p>2 Q. So Mr. Desantis, after he took three or four</p> <p>3 steps in the direction of Officer Menke, stopped and put</p> <p>4 one or more knees on the ground?</p> <p>5 <b>A. Eventually both knees.</b></p> <p>6 Q. And how long was he standing there before both</p> <p>7 knees were on the ground?</p> <p>8 <b>A. There were several commands to do so. It took a</b></p> <p>9 <b>while for him to get on his knees.</b></p> <p>10 Q. Several seconds?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. During this period of time was his wife still in</p> <p>13 the vicinity of the front door of the house?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. You could see her?</p> <p>16 <b>A. No.</b></p> <p>17 Q. Did you -- before the shots were fired, did you</p> <p>18 hear her say anything about a leg injury that he had?</p> <p>19 <b>A. No.</b></p> <p>20 Q. And did you hear over the radio traffic any</p> <p>21 information about a leg injury?</p> <p>22 <b>A. No.</b></p> <p>23 Q. Now, what happened after Mr. Desantis put two</p> <p>24 knees on the ground?</p> <p>25 <b>A. He was told to keep his hands in the air and then</b></p> <p style="text-align: right;">119</p>	<p>1 MS. FOWLER: Other than what he's already</p> <p>2 testified to?</p> <p>3 MR. SCOTT: Yes.</p> <p>4 THE WITNESS: No.</p> <p>5 MR. SCOTT: Q. And how would you describe</p> <p>6 Officer Menke's tone of voice?</p> <p>7 <b>A. Assertive.</b></p> <p>8 Q. Loud?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Was he screaming?</p> <p>11 <b>A. No.</b></p> <p>12 Q. Did Mr. Desantis ever say anything to Officer</p> <p>13 Menke?</p> <p>14 <b>A. No.</b></p> <p>15 Q. When Mr. Desantis put his hands on the ground was</p> <p>16 he in a prone position?</p> <p>17 <b>A. No.</b></p> <p>18 Q. What position was he in?</p> <p>19 <b>A. Kneeling.</b></p> <p>20 Q. He was kneeling and he had his hands facing down</p> <p>21 on the ground?</p> <p>22 <b>A. Briefly.</b></p> <p>23 Q. For how long?</p> <p>24 <b>A. He would pick them up, take them off the ground,</b></p> <p>25 <b>and then put them back down.</b></p> <p style="text-align: right;">121</p>

1 Q. How many times did he do that?  
 2 **A. I would es- -- excuse me. I would estimate one**  
 3 **or two times.**  
 4 Q. At that time would it have been appropriate to  
 5 have the dog go after Mr. Desantis?  
 6 **A. No.**  
 7 Q. Why not?  
 8 **A. Because, although he was hesitantly complying, he**  
 9 **was complying.**  
 10 Q. Okay. Now, at that point were you going to go  
 11 over or have someone go over to Mr. Desantis and handcuff  
 12 him?  
 13 **A. Once he was proned out.**  
 14 Q. What does that mean, proned out?  
 15 **A. Once we gained his compliance and he was on the**  
 16 **ground.**  
 17 Q. When you say on the ground, what do you mean by  
 18 that? Fully on the ground, not just on his hands and  
 19 knees?  
 20 **A. Correct.**  
 21 Q. So the idea was once he got fully on the ground,  
 22 not just on his hands and knees, someone would -- one or  
 23 more persons would approach him to handcuff him?  
 24 **A. Yes.**  
 25 Q. And if he didn't do that was putting the dog on

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1 him ever an option?  
 2 MS. FOWLER: I object. Incomplete hypothetical.  
 3 THE WITNESS: No.  
 4 MR. SCOTT: Q. Okay. Was using a Taser ever an  
 5 option?  
 6 MS. FOWLER: Again, I'm going to object.  
 7 Incomplete hypothetical. Also, vague and ambiguous as to  
 8 time.  
 9 MR. SCOTT: Q. At this point. He's on the  
 10 ground. Hands and knees are on the ground.  
 11 **A. No.**  
 12 Q. Okay. And why not?  
 13 **A. It's too far away.**  
 14 Q. How far away was he?  
 15 **A. 16 to 18 yards, approximately.**  
 16 Q. Okay. Was that for tactical reasons to have him  
 17 go on the ground that far away?  
 18 **A. Yes.**  
 19 Q. Was there tactical reasons you wanted to stay  
 20 that far away from him before you -- that you were going  
 21 to stay 16 or 18 yards from him before he was fully prone?  
 22 **A. Yes.**  
 23 Q. Okay. Is that part of your training?  
 24 **A. Yes.**  
 25 Q. So at this point what's the next thing

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1 Mr. Desantis did?  
 2 **A. Mr. Desantis was ordered to lay down prone. He**  
 3 **bent forward, rolled his hips towards the ground,**  
 4 **immediately came back up to his kneeling position.**  
 5 Q. When you say rolled his hips to the ground, what  
 6 do you mean by that?  
 7 **A. He went from having his hands and knees on the**  
 8 **ground to moving forward, placing his hips on the ground.**  
 9 Q. The side of his hips or...  
 10 **A. No, like he was going to lie down.**  
 11 Q. Okay. On his back or on his stomach?  
 12 **A. On his stomach.**  
 13 Q. So did he do that by kind of going forward or  
 14 sideways on his hands -- he's on his hands and knees. And  
 15 what did he do to make it appear like he was going to go  
 16 on the ground on his stomach?  
 17 **A. He pushed his hips forward.**  
 18 Q. And what were his hands doing at that point?  
 19 **A. Staying in the same spot.**  
 20 Q. Did his face hit the ground?  
 21 **A. I don't think so.**  
 22 Q. Did any of his upper body touch the ground?  
 23 **A. No.**  
 24 Q. Okay. And then what happened? How long was he  
 25 in that position where he was kind of leaned forward but

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1 hadn't touched the ground yet?  
 2 **A. Approximately a second.**  
 3 Q. And then what happened?  
 4 **A. He was back at the kneeling position.**  
 5 Q. For how long?  
 6 **A. A couple seconds.**  
 7 Q. And were commands still being made?  
 8 **A. Yes.**  
 9 Q. Did it appear that the commands were not being  
 10 followed?  
 11 **A. Yes.**  
 12 Q. Did -- what were your options at that point if he  
 13 wasn't going to follow commands?  
 14 **A. To continue to try to gain his compliance.**  
 15 Q. And was negotiating with him an option at that  
 16 time?  
 17 **A. Had he been responsive.**  
 18 Q. And was putting a dog on him an option at that  
 19 time?  
 20 **A. No.**  
 21 Q. Okay. And what's the next thing you saw him do  
 22 after he was on his hands and knees again for about a  
 23 second?  
 24 **A. He looked at me, looked towards me, looked**  
 25 **towards his wife's direction, and looked at Travis and**

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## DEPOSITION OF RICHARD CELLI

<p>1 ran.</p> <p>2 Q. And did what?</p> <p>3 A. Ran.</p> <p>4 Q. Ran. On his hands and knees or did he get up?</p> <p>5 A. He got up.</p> <p>6 Q. And did he look at you and his wife and Officer</p> <p>7 Menke before he got up or after he got up?</p> <p>8 A. Before he got up.</p> <p>9 Q. And how long did he look in your direction?</p> <p>10 A. Momentarily.</p> <p>11 Q. And then how long did he look at his wife?</p> <p>12 A. Momentarily.</p> <p>13 Q. And did he look at you first?</p> <p>14 A. I don't know.</p> <p>15 Q. Did he look at his wife before or after he looked</p> <p>16 at you?</p> <p>17 A. I don't know.</p> <p>18 Q. And describe how he got up.</p> <p>19 A. He took off like he left the sprinter blocks, if</p> <p>20 you know what sprinter blocks are.</p> <p>21 Q. I ran track, so I know what they are very well.</p> <p>22 So he came -- got up and like he was coming out of</p> <p>23 sprinter blocks?</p> <p>24 A. Yes.</p> <p>25 Q. Without track shoes? All right. And was he</p>	<p>1 Q. His arms were pumping?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And you could see his arms moving like a</p> <p>4 sprinter?</p> <p>5 A. Yes.</p> <p>6 Q. And his legs were moving like a sprinter?</p> <p>7 A. Yes.</p> <p>8 Q. And there was nothing in his hands?</p> <p>9 A. No.</p> <p>10 Q. Correct? Correct, there was nothing in his</p> <p>11 hands?</p> <p>12 A. Correct.</p> <p>13 Q. And then what happened?</p> <p>14 A. After several steps when Mr. Desantis --</p> <p>15 Officer -- Sergeant Soares stepped forward to my left and</p> <p>16 fired the less lethal Sage.</p> <p>17 Q. When he stepped in front of you -- when you say</p> <p>18 he stepped, was that kind of in front of you between you</p> <p>19 and Mr. Desantis?</p> <p>20 A. He just stepped to my left.</p> <p>21 Q. So he didn't get in your -- what would be your</p> <p>22 line of fire?</p> <p>23 A. Correct.</p> <p>24 Q. And how far away was -- well, did you order him</p> <p>25 to shoot?</p>
<p>1 sprinting?</p> <p>2 A. Yes.</p> <p>3 Q. Have you ever sprinted?</p> <p>4 A. Yes.</p> <p>5 Q. Did you run the hundred, 220, 240, or you just</p> <p>6 sprinted for fun?</p> <p>7 A. I've run track.</p> <p>8 Q. What events?</p> <p>9 A. All types. Short distance, long distance.</p> <p>10 Q. What was your best time in a hundred?</p> <p>11 A. I have no idea.</p> <p>12 Q. Okay. So -- but you've run out of blocks?</p> <p>13 A. Yes.</p> <p>14 Q. On tracks?</p> <p>15 A. Yes.</p> <p>16 Q. In high school or in college?</p> <p>17 A. High school.</p> <p>18 Q. And you know what it looks like to sprint, right?</p> <p>19 A. Yes.</p> <p>20 Q. And was Mr. Desantis sprinting?</p> <p>21 A. Yes.</p> <p>22 Q. And what direction was he sprinting?</p> <p>23 A. Directly at Travis and Officer Mann.</p> <p>24 Q. And his legs were pumping?</p> <p>25 A. Yes.</p>	<p>1 A. No.</p> <p>2 Q. Were you surprised that he shot?</p> <p>3 A. No.</p> <p>4 Q. Why didn't you shoot?</p> <p>5 A. Before that?</p> <p>6 Q. Yeah, or at the same time. What were you waiting</p> <p>7 for?</p> <p>8 A. Compliance, which wasn't happening.</p> <p>9 Q. Okay. So why didn't you shoot before Sergeant</p> <p>10 Soares shot?</p> <p>11 A. I just hadn't.</p> <p>12 Q. Were you waiting for him to shoot?</p> <p>13 A. No.</p> <p>14 Q. And approximately how far was Mr. Desantis from</p> <p>15 Sergeant Soares when Sergeant Soares shot?</p> <p>16 A. I would estimate approximately 10 to 12 yards.</p> <p>17 Q. 30 to 35 feet?</p> <p>18 A. Yes.</p> <p>19 Q. And approximately how far was Mr. Desantis from</p> <p>20 Officer Menke when the first shot was fired?</p> <p>21 A. 10 to 15 feet -- yards.</p> <p>22 Q. Yards?</p> <p>23 A. Yards.</p> <p>24 Q. So 30 to 45 feet?</p> <p>25 A. Yes.</p>



<p>1 Q. About the same distance -- Desantis at this point</p> <p>2 was about the same distance from Sergeant Soares as he was</p> <p>3 from Officer Menke, or maybe he was a little closer to</p> <p>4 Soares?</p> <p>5 <b>A. A little closer to Soares.</b></p> <p>6 Q. Okay. And how far had Desantis sprinted before</p> <p>7 the first shot was fired?</p> <p>8 <b>A. 7 to 10 yards, approximately.</b></p> <p>9 Q. 20 to 30 feet?</p> <p>10 <b>A. Yes, approximately.</b></p> <p>11 Q. And at this point when Sergeant Soares fired the</p> <p>12 Sage, was your rifle pointed in the direction of</p> <p>13 Mr. Desantis?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Were you aiming for any particular thing in his</p> <p>16 body?</p> <p>17 <b>A. His upper body.</b></p> <p>18 Q. Center mass?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Were you trying to kill him?</p> <p>21 <b>A. When I was aiming at him?</b></p> <p>22 Q. Yeah.</p> <p>23 <b>A. I was aiming at him.</b></p> <p>24 Q. Did you understand that center mass would be a</p> <p>25 kill shot?</p> <p style="text-align: right;">130</p>	<p>1 you don't know.</p> <p>2 <b>A. I don't know.</b></p> <p>3 Q. When you have training with the -- I'm sorry, the</p> <p>4 AR 15, is that what it's called?</p> <p>5 <b>A. Correct.</b></p> <p>6 Q. When you have training with the AR 15 do you</p> <p>7 shoot into various types of objects, meaning cars and wood</p> <p>8 and houses and things like that?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. So you know what that round is capable of doing?</p> <p>11 <b>A. Generally.</b></p> <p>12 Q. It can go through walls?</p> <p>13 <b>A. Sometimes.</b></p> <p>14 Q. Could go through a car door?</p> <p>15 <b>A. Sometimes.</b></p> <p>16 Q. Okay. Do you have any training on what it does</p> <p>17 to a human body?</p> <p>18 <b>A. No.</b></p> <p>19 MR. SCOTT: I think we're running out of tape so</p> <p>20 I'm going to take a recess so we can change the tape and</p> <p>21 take a short recess.</p> <p>22 THE VIDEOGRAPHER: This marks the end of volume</p> <p>23 1, videotape number 2, in the deposition of Richard Celli</p> <p>24 on November 14th, 2007. The time now is 5:39. We are off</p> <p>25 the record.</p> <p style="text-align: right;">132</p>
<p>1 <b>A. No.</b></p> <p>2 Q. Did you have an option of shooting at his legs?</p> <p>3 <b>A. No.</b></p> <p>4 Q. Why not?</p> <p>5 <b>A. I'm trained to use the force necessary to stop</b></p> <p>6 <b>him, and center mass would have more ability to stop him.</b></p> <p>7 Q. Are you trained to shoot at moving targets?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Where did you receive that training?</p> <p>10 <b>A. At the police department.</b></p> <p>11 Q. Is that part of everybody's training or just SWAT</p> <p>12 team?</p> <p>13 <b>A. Everyone's training.</b></p> <p>14 Q. Is to shoot at moving targets?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. And are you trained to shoot in both daytime and</p> <p>17 night time situations?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And is everyone at the police department trained</p> <p>20 to shoot in daytime and night time situations?</p> <p>21 <b>A. The officers are, yes.</b></p> <p>22 Q. And did you think that a shot from your A 15 to</p> <p>23 his leg would have stopped him?</p> <p>24 MS. FOWLER: Object. Calls for speculation.</p> <p>25 MR. SCOTT: Q. Well, if you don't know, just say</p> <p style="text-align: right;">131</p>	<p>1 (Brief recess taken from 5:39 p.m. to 5:48 p.m.)</p> <p>2 THE VIDEOGRAPHER: This marks the beginning of</p> <p>3 volume 1, videotape number 3 in the deposition of Richard</p> <p>4 Celli in the matter of Patricia Desantis, et al. versus</p> <p>5 City of Santa Rosa in the United States District Court,</p> <p>6 Northern District of California, case number</p> <p>7 C 07-3386 JSW. Today's date is November 14th, 2007, and</p> <p>8 the time now is 5:48 on the record.</p> <p>9 MR. SCOTT: Back on the record.</p> <p>10 Q. Mr. Celli, we left off and I think where we left</p> <p>11 off Mr. Desantis was sprinting in the direction of Officer</p> <p>12 Menke and you observed Sergeant Soares take a position,</p> <p>13 aim his Sage -- and how is that spelled, s-a-g or s-a-g-e?</p> <p>14 <b>A. S-a-g-e.</b></p> <p>15 Q. And did you see Sergeant Soares fire the Sage?</p> <p>16 <b>A. I heard it.</b></p> <p>17 Q. And did you -- what's the next thing you saw</p> <p>18 after you heard the Sage being fired?</p> <p>19 <b>A. It appeared that the Sage round hit Mr. Desantis,</b></p> <p>20 <b>he tilted his body right, briefly, and proceeded towards</b></p> <p>21 <b>Officers Menke and Mann.</b></p> <p>22 Q. Was he still sprinting?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. At any time did he stop sprinting?</p> <p>25 <b>A. No.</b></p> <p style="text-align: right;">133</p>

DEPOSITION OF RICHARD CELLI



1 Q. So he kept sprinting, but he just tilted  
2 slightly?  
3 **A. Yes.**  
4 Q. And it appeared that he had been shot?  
5 **A. Yes.**  
6 Q. And did it appear that he'd been shot in his  
7 right arm?  
8 **A. I couldn't tell.**  
9 Q. But it appeared -- at least there appeared to be  
10 an impact in his body that you observed?  
11 **A. Yes.**  
12 Q. Okay. And you saw his body tilt, I think you  
13 said?  
14 **A. Yes.**  
15 Q. And you associated that tilt with him being hit?  
16 **A. Yes.**  
17 Q. And at this point is this a shoot and assess  
18 situation?  
19 **A. For me?**  
20 Q. Yes.  
21 **A. Yes.**  
22 Q. And how long did you assess Mr. Desantis after it  
23 appeared that he was shot by the Sage?  
24 **A. Immediately.**  
25 Q. What period of time?

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1 **A. A second.**  
2 Q. One second?  
3 **A. Maybe -- I would say a second to two,**  
4 **approximately.**  
5 Q. And in those one or two seconds what did you  
6 observe Mr. Desantis do?  
7 **A. Continue towards Officer Menke and Mann.**  
8 Q. And was he still continuing as a sprinter?  
9 **A. Yes.**  
10 Q. And his legs were -- and his arms were moving  
11 like a sprinter?  
12 **A. Yes.**  
13 Q. And there was nothing in his hands, correct?  
14 **A. Correct.**  
15 Q. What were you afraid he was going to do, tackle  
16 them or run by them, what were you thinking?  
17 **A. He was attacking them.**  
18 Q. And were you afraid he was going to kill them?  
19 **A. Yes.**  
20 Q. And how did you think he was going to kill them?  
21 **A. By either pulling out a weapon or taking theirs.**  
22 Q. And what did you do?  
23 **A. I shot him.**  
24 Q. And where -- how far had he moved from when the  
25 Sage round hit him to when you pulled -- squeezed the

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1 trigger?  
2 **A. A couple of steps.**  
3 Q. Okay. Are you sure it was a couple of steps, not  
4 more?  
5 **A. Two to four steps.**  
6 Q. And approximately how many feet had he moved in  
7 those two to four steps?  
8 **A. Approximately three to four yards.**  
9 Q. And how far away was he from Officer Menke when  
10 you fired?  
11 **A. Approximately six to eight yards.**  
12 Q. And how far away was he from you when you fired?  
13 **A. A little further, approximately, I'd say, seven**  
14 **to nine yards.**  
15 Q. 20, 25 feet?  
16 **A. Approximately.**  
17 Q. It would have been maybe 15 or 20 feet from  
18 Officer Menke?  
19 **A. Approximately.**  
20 Q. And did it appear to you that he was heading  
21 directly towards Officer Menke?  
22 **A. Yes.**  
23 Q. How big is Officer Menke?  
24 **A. Approximately five-six to five-nine, 150 to 175**  
25 **pounds, approximately.**

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1 Q. Okay. Well, what happened, what did you observe  
2 after you fired your shot?  
3 **A. Mr. Desantis's body starting to turn.**  
4 Q. Was he still sprinting?  
5 **A. Yes.**  
6 Q. And why didn't you shoot again if he was still  
7 sprinting?  
8 **A. I was assessing.**  
9 Q. And how many steps did he take while you were  
10 assessing?  
11 **A. Maybe one to two.**  
12 Q. And then what happened?  
13 **A. Two more shots were fired.**  
14 Q. And why didn't you shoot again?  
15 **A. Mr. Desantis stopped.**  
16 Q. After the other two shots were fired?  
17 **A. Yes.**  
18 Q. Do you know who fired the other two shots?  
19 MS. FOWLER: Now, or did he know then?  
20 MR. SCOTT: Q. Did you know then?  
21 **A. I did not know then.**  
22 Q. This is a good place to stop, so let's stop here  
23 for today. This deposition will be reconvened at a time  
24 that is mutually convenient for the witness and for  
25 opposing counsel but, hopefully, sometime before we get to

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1 the ENE, so sometime between now and January 7th we'll try  
2 to finish this at a mutually convenient time.

3 MS. FOWLER: The only potential issue is that I  
4 may be sent out to trial so we'll just have to work around  
5 that.

6 MR. SCOTT: Fine. I'm happen to accommodate  
7 everybody's schedule. Okay.

8 THE VIDEOGRAPHER: This is the end of volume 1,  
9 tape number 3. This concludes the deposition of Richard  
10 Celli. The original videotapes will be retained by Dan  
11 Mottaz Video Productions, LLC, 182 Second Street, Suite  
12 202, San Francisco, California 94105. 415-624-1300. The  
13 time is now 5:56 and we are off the record.

14 (Whereupon the deposition was  
15 recessed at 5:56 p.m.)  
16  
17

18 \_\_\_\_\_  
19 RICHARD CELLI  
20  
21  
22  
23  
24  
25

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DEPOSITION OF RICHARD CELLI

STATE OF CALIFORNIA

I do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of the said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting; that thereafter, the witness was given an opportunity to read and correct the deposition transcript, and to subscribe the same; that if unsigned by the witness, the signature has been waived in accordance with stipulation between counsel for the respective parties.

And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand the 26<sup>th</sup>  
day of November, 2007.

  
Certified Shorthand Reporter

CSR No. 4748

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

---oOo---

PATRICIA DeSANTIS, )  
individually, and as Successor )  
in Interest for RICHARD )  
DeSANTIS, deceased, and as )  
Guardian Ad Litem for DANI )  
DeSANTIS, a minor, )

Plaintiffs, )

vs. )

No. C-07 3386 JSW )

CITY OF SANTA ROSA, JERRY )  
SOARES, RICH CELLI, TRAVIS )  
MENKE, PATRICIA MANN, and DOES )  
1 through 25, inclusive, )

Defendants. )

DEPOSITION OF RICHARD CELLI

VOLUME II - PAGES 140 - 261

June 11, 2008

REPORTED BY: A. MAGGI SAUNDERS,

C.S.R. No. 2755



**A. Maggi Saunders & Associates**  
Certified Shorthand Reporters

57 Plymouth Avenue, Mill Valley, California 94941

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(415) 383-6281

1 session of your deposition, you mentioned that in, I  
 2 believe February of 2007, you were involved in another  
 3 shooting, correct?  
 4 A. Yes.  
 5 Q. Okay. And we were going to delay until a  
 6 later time, and that is right now, asking questions  
 7 about that other shooting.  
 8 Now, my understanding is that the District  
 9 Attorney has also announced that it's not prosecuting  
 10 you or anyone else relating to that the shooting,  
 11 correct?  
 12 A. Correct.  
 13 Q. And, to your knowledge, did the Santa Rosa  
 14 Police Department do an independent review of that  
 15 shooting --  
 16 A. Correct.  
 17 Q. -- other than relying on the District  
 18 Attorney and the Sheriff's Department?  
 19 A. I don't know.  
 20 Q. Okay. And in that shooting incident do  
 21 you know how many Officers fired weapons?  
 22 A. Four.  
 23 Q. And you were one of those four?  
 24 A. Yes.  
 25 Q. Okay. And who were the other three

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1 Officers who fired weapons.  
 2 A. Officer -- or Sergeant Craig Schwartz;  
 3 Officer Brian Boettger, B-o-e-t-t-g-e-r; Officer John  
 4 Barr, B-a-r-r.  
 5 Q. Were these other Officers part of the SWAT  
 6 team?  
 7 A. Yes.  
 8 Q. And was this other shooting incident a  
 9 situation where a -- the SWAT team was called to  
 10 respond to an incident?  
 11 A. Yes.  
 12 Q. And can you summarize for me what the  
 13 incident was that you responded to?  
 14 A. It was a request for a mutual aid from the  
 15 Oakland Police Department regarding a -- the location  
 16 of a homicide suspect.  
 17 Q. And was this homicide suspect known to  
 18 you, or someone you had had prior contact with?  
 19 A. No.  
 20 Q. And was this homicide suspect believed to  
 21 have been armed and dangerous?  
 22 A. Yes.  
 23 Q. Okay. And that was the information you  
 24 had, that he was armed and dangerous?  
 25 A. Yes.

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1 Q. And can you summarize for me briefly the  
 2 events leading up to the shooting, as you observed  
 3 them?  
 4 A. Yes.  
 5 Q. Okay. What happened? At least, what did  
 6 you see?  
 7 A. How far do we want to go back?  
 8 Q. To when you arrived at the scene.  
 9 A. Okay.  
 10 I arrived at the scene just north of the  
 11 location with the other Officers; there was actually  
 12 five of us there. We were what we call a "React  
 13 Team". The rest of the team was on their way to the  
 14 scene.  
 15 We got there, contacted the Oakland Police  
 16 Department Sergeant in charge of his scene, as well as  
 17 one of our Commanding Officers, Lieutenant Briggs.  
 18 Q. Do you recall who that Sergeant was?  
 19 A. No, I don't.  
 20 Q. Thank you. Go ahead.  
 21 A. Briefly obtained photographs of the  
 22 suspect and his girlfriend;  
 23 And then, we were advised that the  
 24 suspects were leaving the hotel room in maybe an  
 25 attempt to flee.

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1 We were unable to establish a further Plan  
 2 of Action, other than that we were going to try to  
 3 contain the subjects at the hotel, and avoid any  
 4 hostage scenarios.  
 5 Q. Was there a perimeter established?  
 6 A. Yes.  
 7 Q. When you say a "React Team," what is a  
 8 React Team?  
 9 A. It's a team that first arrives on the  
 10 scene, in case a major type of incident is evolving.  
 11 It's essentially trying to just get  
 12 persons out to the location before the main part --  
 13 body of the team arrives.  
 14 Q. And were you a member of the React Team at  
 15 that time?  
 16 A. It -- Yeah, there is no set React Team for  
 17 the Department. It was basically myself and Sergeant  
 18 Schwartz who pulled three of the first responding  
 19 Officers together to go out.  
 20 Q. So, if I understand you correctly, based  
 21 on availability, whichever members of the SWAT team are  
 22 able to respond to a scene the most rapidly will be the  
 23 React Team?  
 24 A. Yes.  
 25 Q. All right. And I take it, you received

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1 officer first in line would be giving cover to the  
 2 officers behind him?  
 3 In other words, you were exposing fewer  
 4 officers to a risk of being shot, if you are lined up  
 5 one behind the other, or why did you do it that way?  
 6 A. We were just heading to the location.  
 7 There wasn't a -- at that point a determination who was  
 8 going to take cover, or positions of cover for the  
 9 others. We were just trying to get to the location.  
 10 Q. All right. And can you describe the  
 11 suspect for me, what he looked like?  
 12 A. Black male, early 20s. I think he had a  
 13 beanie cap at the time.  
 14 Q. Do you recall what he was wearing?  
 15 A. A jacket and jeans.  
 16 Q. And was he with someone else, or alone?  
 17 MS. FOWLER: At that point in time?  
 18 MR. SCOTT: Q. At that point in time.  
 19 A. Alone.  
 20 Q. And at the time he turned and started  
 21 running toward you, had you heard anyone identify  
 22 themselves as "Police"? Did anybody say, you know,  
 23 "Stop. Police. Hands up," anything like that?  
 24 A. Not that I was aware of.  
 25 Q. Okay. And as he turned and started

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1 running in your direction, what happened next?  
 2 A. He turned, saw us, and began running still  
 3 towards our direction, but had changed directions  
 4 heading due east, now I would say past us, but away  
 5 from us.  
 6 Q. Would that have been, if you are looking  
 7 at him, to your right or your left?  
 8 A. Heading left.  
 9 Q. Heading left.  
 10 Okay. And heading at a diagonal, or  
 11 somewhat toward you, or away from you while going to  
 12 your left.  
 13 A. He actually ran by us -- I wouldn't call  
 14 it diagonal, but he didn't -- he didn't close distance  
 15 towards us at that point. And basically he ran  
 16 probably 15 yards away from us as he passed us all the  
 17 way.  
 18 Q. What was the closest he ever got to you?  
 19 A. About 15 -- Well, [Thinking] 12, 14 yards.  
 20 Q. Okay. And as he was running, did he  
 21 start -- come closer to you and then turn and start  
 22 going more away from you; is that how it worked?  
 23 A. Um. . .  
 24 Q. In other words, there was a period he was  
 25 closing, getting closer to you, and then he kind of

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1 went to your left --  
 2 A. Yes.  
 3 Q. -- and he was going away from you as he  
 4 was going to your left?  
 5 A. Correct.  
 6 Q. Okay. And was he running?  
 7 A. Yes.  
 8 Q. And what happened next?  
 9 A. He began running away from us. As he did  
 10 so, I was identifying myself as a Police Officer,  
 11 yelling at him to "get down," as were several other  
 12 Officers.  
 13 He immediately reached into the right side  
 14 of his waistband with both his right and left hand.  
 15 Q. Okay. And then what happened?  
 16 A. He continued to run towards the freeway,  
 17 which is east, just due east of us, with a three to  
 18 four-foot-high chain-link fence there.  
 19 Q. And so, would this be an entrance or exit  
 20 to 101?  
 21 A. No entrance. It was just a chain link  
 22 fence that borders 101.  
 23 Q. Okay. And which side of 101 is it, east  
 24 or the west side?  
 25 A. The west side.

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1 Q. All right. And between which exits?  
 2 A. Between the Steele Lane exit and the  
 3 Bicentennial exit.  
 4 Q. All right. Do you recall the name of the  
 5 hotel?  
 6 A. The Comfort Inn.  
 7 Q. And as he was running towards that fence,  
 8 what happened next?  
 9 A. He got towards the fence. He was still  
 10 reaching into his waistband, and began to turn towards  
 11 us. And I actually think he was -- I think he had  
 12 gotten one leg up on the fence as he was turning back  
 13 at us.  
 14 Q. Okay. Do you recall which leg it was?  
 15 A. I believe it was the left leg.  
 16 Q. All right. And did you see him --  
 17 Was he kind of jumping over the fence,  
 18 or using his hands to get over the fence?  
 19 A. He was just trying to hop over it, kind of  
 20 like you would -- not that you would hurdle it, cuz it  
 21 wasn't a hurdle, but maybe try to roll over the top of  
 22 the fence.  
 23 Q. Okay. And as he was trying to put one of  
 24 his legs over the fence, what was he doing with his  
 25 arms?

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1 A. **He still was reaching into his waistband.**  
2 Q. Okay. As he was trying to put a leg over  
3 the fence?  
4 A. **Yes.**  
5 Q. Okay. And then what happened?  
6 A. **He was shot.**  
7 Q. Approximately what distance was he from  
8 you when he was shot?  
9 A. **15 to 18 yards, approximately.**  
10 Q. And of the four Officers who shot, was it  
11 all simultaneous, or was there some order you could  
12 determine?  
13 A. **I couldn't determine. I knew at the time**  
14 **I was shooting there were other -- had other shots at**  
15 **the time I was.**  
16 Q. Okay. Do you know if, of the four  
17 Officers who fired, who fired the first shot?  
18 A. **I don't know.**  
19 Q. How many shots did you fire?  
20 A. **I believe two to three.**  
21 Q. Okay. And was it in rapid succession, or  
22 some space between those shots?  
23 A. **Rapid succession.**  
24 Q. And did you know if any of your shots hit  
25 the suspect?

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1 A. **I don't know.**  
2 Q. Do you know how many shots hit the  
3 suspect?  
4 A. **I don't recall.**  
5 Q. To your knowledge, did anyone in the Santa  
6 Rosa Police Department try to determine if any of your  
7 shots hit the suspect?  
8 A. **I don't know.**  
9 Q. All right. To your knowledge, was there  
10 any kind of debriefing done of the SWAT team in  
11 relation to that incident?  
12 MS. FOWLER: To the extent that that may  
13 call for privileged attorney-client communications, or  
14 privileged psychotherapist/patient communications, I  
15 would instruct you not to reveal any conversations or  
16 debriefings in which either an attorney, or some type  
17 of psychotherapist was present.  
18 MR. SCOTT: Q. Right.  
19 No, other than what may have been for --  
20 with attorneys for possible litigation purposes, or  
21 psychotherapists, I want to know, just for business  
22 purposes, for purposes of just doing an analysis of  
23 this, for purposes of doing your job, was there a  
24 debriefing done by or with the SWAT team of this  
25 incident?

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1 A. **We talked about it as a team.**  
2 Q. All right. And when did that occur?  
3 A. **(No audible response).**  
4 Q. Was this formal or informal?  
5 A. **Informal.**  
6 Q. Okay. Was there a formal --  
7 A. **Well, it was at training, but -- so I**  
8 **guess you would call it -- Well, I don't know how would**  
9 **you call that, formal or informal.**  
10 Q. Okay. Let me ask you --  
11 MS. FOWLER: Vague and ambiguous as to  
12 what you mean by formal.  
13 MR. SCOTT: Q. Have you ever participated  
14 in any formal debriefing regarding an incident?  
15 MS. FOWLER: And, again, to the extent  
16 that that involves privileged communications, I would  
17 instruct you not to answer.  
18 THE WITNESS: Yes.  
19 MR. SCOTT: Q. Yeah, okay, no, I'm not  
20 talking about with lawyers. I'm talking about without  
21 lawyers: Have you ever participated in a formal  
22 debriefing?  
23 A. **All the time.**  
24 Q. When you say all the time, what do you  
25 mean by that?

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1 A. **At my briefing training, roll-call**  
2 **training -- or roll call, we may discuss the night's**  
3 **prior incidents, responses, tactics.**  
4 Q. Okay. And what do you understand to be  
5 the purpose of a formal debriefing of an incident?  
6 A. **There are many purposes, but one would be**  
7 **tactics;**  
8 **Another one would be deployment: How we**  
9 **obtain information, how everybody feels about it,**  
10 **their job, how they did.**  
11 Q. Okay. And is it your understanding one of  
12 the purposes for debriefing would be to both identify  
13 things you did right and things that you may have done  
14 wrong, for purposes of, you know, not making mistakes  
15 in the future?  
16 A. **Absolutely.**  
17 Q. All right.  
18 And approximately how many debriefings  
19 have you participated in as a member of the SWAT  
20 team? I'm talking about formal debriefings.  
21 MS. FOWLER: Again, I'm going to object  
22 that the term "formal" is vague and ambiguous, but you  
23 can answer the question.  
24 THE WITNESS: I don't know the number, but  
25 we try to debrief every mission that we go on.

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1 MR. SCOTT: Q. And why do you do that?  
 2 A. To find out what we've learned from it.  
 3 Again, the things we did positive, and the things  
 4 that we could have done better.  
 5 Q. All right. And based on your experience  
 6 with the SWAT team, are these debriefings usually led  
 7 by a Sergeant or a Lieutenant somewhere in a command  
 8 position?  
 9 A. Usually yeah, just a sergeant does, but  
 10 that's essentially just to get the ball rolling.  
 11 Q. And where do the -- For purposes of the  
 12 SWAT team, where do the debriefings usually occur?  
 13 A. Anywhere: Whether that's a training site,  
 14 sitting at lunch, before the training starts, over  
 15 coffee, it could be in a meeting room. All over the  
 16 place.  
 17 Q. Now, the debriefing that occurred after  
 18 the February 2007 shooting, do you recall where that  
 19 occurred?  
 20 A. No.  
 21 Q. And do you recall anything about it?  
 22 A. I really don't.  
 23 Q. Okay. But you do recall there was a  
 24 debriefing that did not involve lawyers of the 2007  
 25 shooting?

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1 A. Of the --  
 2 Q. The February.  
 3 A. Yes.  
 4 Q. Okay. But you don't remember anything  
 5 about it.  
 6 A. No. I think it was essentially just how  
 7 we got there, and what we did, what the team did, as a  
 8 whole, throughout the entire deployment.  
 9 Q. Okay. Do you recall any positives or  
 10 negatives that came up?  
 11 A. We talked about the need, why we have a  
 12 need for a React Team;  
 13 We talked about the deployment of the  
 14 additional officers, some of the tactics that we used  
 15 after the shooting to secure the rest of the building.  
 16 That's about it.  
 17 Q. Okay. Now, the suspect who was shot in  
 18 that incident, was his leg on or partly over the fence  
 19 when he was shot?  
 20 A. Yes.  
 21 Q. All right. And was it kind of partly over  
 22 the fence, or can you describe where his leg was at the  
 23 time he was shot?  
 24 A. When I shot at him, his leg was partially  
 25 over the fence.

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1 Q. And that was the right leg, I think you  
 2 said? I could be mistaken. Do you recall --  
 3 A. Left leg.  
 4 Q. Left leg --  
 5 A. Yes.  
 6 Q. Left leg, okay. Okay, fair enough.  
 7 And what direction was he facing at the  
 8 time you shot?  
 9 A. West.  
 10 Q. In your direction?  
 11 A. Yeah. His face and upper body was facing  
 12 me.  
 13 Q. Okay. And where were his hands when you  
 14 fired?  
 15 A. In his waistband.  
 16 Q. Okay. Both hands?  
 17 A. Yes.  
 18 Q. And after he was shot, did he fall to the  
 19 ground, or was he kind of hung up on the fence?  
 20 A. No, he fell to the ground.  
 21 Q. All right. And did you approach him?  
 22 A. Yes.  
 23 Q. And did you search him?  
 24 A. I did not.  
 25 Q. Was he -- Did someone search him in your

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1 presence?  
 2 A. No.  
 3 Q. To your knowledge, did anyone ever search  
 4 him for a weapon?  
 5 A. Somebody probably did. I did not.  
 6 Q. You don't know if he was searched for a  
 7 weapon?  
 8 A. I wasn't there to witness that.  
 9 Q. Okay. But at some point you -- after he  
 10 was shot you approached him?  
 11 A. Yes.  
 12 Q. How close did you get to him?  
 13 A. 5 yards.  
 14 Q. Okay. And how long did he stay  
 15 approximately 5 yards from you?  
 16 A. Briefly. Momentarily.  
 17 Q. And what did you observe?  
 18 A. He was on his stomach. One of the  
 19 officers, I don't know who, asked him to put his arms  
 20 out. He put his arms out, and stopped moving.  
 21 At that point, one of the perimeter  
 22 officers was approaching from the right and going up to  
 23 him, and that's when I turned and went back towards the  
 24 hotel.  
 25 Q. Okay. Did you try to find out if he was

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1 armed at the time he was shot?  
2 A. No.  
3 MS. FOWLER: After the fact, you mean?  
4 MR. SCOTT: Q. Yeah, after the fact.  
5 A. After the fact I learned that he was not.  
6 Q. All right. And when did you learn that?  
7 A. I want to say, the next day.  
8 Q. All right. Do you recall how you learned  
9 that?  
10 A. I don't.  
11 Q. Now, I'd like to mark as Exhibit -- and I  
12 forget what number this is, but we'll make it next  
13 consecutively, I'll confirm with the Court Reporter.  
14 THE VIDEOGRAPHER: Going off the record,  
15 the time on the monitor is 10:43 a.m.  
16 (Brief discussion held off the record.)  
17 (Training Log, Santa Rosa Police  
18 Department marked Plaintiffs' Exhibit 1  
19 for identification.)  
20 THE VIDEOGRAPHER: Coming back on the  
21 record, the time on the monitor is 10:44 a.m.  
22 Please begin.  
23 MR. SCOTT: Okay. The record should  
24 reflect I've marked as Exhibit No. 1 to today's  
25 deposition a several-page document, appears to be seven  
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1 pages. And the first page says, "Training Log for  
2 Richard T. Celli, ID No. S19". It says "Date of Hire,  
3 11/5/1990".  
4 Q. And this appears to be at least a summary  
5 of some, if not all, of your training records with the  
6 Santa Rosa Police Department.  
7 Do you recognize what we've marked as  
8 Exhibit No. 1, Sergeant Celli?  
9 A. I don't recognize it, but I understand it.  
10 Q. Okay. And what do you mean by that?  
11 A. It looks like a list of my individual  
12 training activity.  
13 Q. Okay. And to your knowledge, is this a  
14 document that would be maintained in the normal course  
15 of business by the Police Department, or do you know  
16 one way or the other?  
17 MS. FOWLER: Just for the record, I'd  
18 object that there is lack of foundation. But if you  
19 know, go ahead.  
20 THE WITNESS: Yeah, it's maintained by, I  
21 believe, our Training Department.  
22 MR. SCOTT: Q. All right.  
23 MS. FOWLER: And just for the record, I'd  
24 point out that this was dated as of 10/10/07, which is  
25 when this particular record was run and --  
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1 MR. SCOTT: Understood.  
2 MS. FOWLER: -- produced in response to  
3 you, so obviously since that time there has been  
4 additional training.  
5 MR. SCOTT: Q. Yeah, I'm assuming there  
6 has been additional training. I'm most interested in  
7 the training you had before the shooting in April of  
8 2007. I'm not as interested in training you've  
9 received since April of 2007.  
10 But, to your knowledge, does this appear  
11 to accurately reflect your training with the Santa Rosa  
12 Police Department since you were hired in November of  
13 1990?  
14 MS. FOWLER: And take your time to look at  
15 it. It's a multi-page document.  
16 MR. SCOTT: Q. Please, take your time.  
17 A. (Reviewing the document.)  
18 It appears to be what I would believe to  
19 be a close, if not all, but I can't recall all of my  
20 training.  
21 Q. Okay. Would it be fair to say that you  
22 haven't independently gone and checked your records, or  
23 whatever records the Department has, with this  
24 document, to see if this is complete and accurate.  
25 A. Correct.  
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1 Q. Okay. But it appears to be generally  
2 accurate, although you can't testify that it's entirely  
3 accurate; would that be fair to say?  
4 A. Yes.  
5 Q. Now, does the term "mandatory training"  
6 mean anything to you?  
7 A. That means that we're required to go to  
8 training.  
9 Q. And are there certain things in this  
10 document, Exhibit No. 1, that would be mandatory  
11 training?  
12 A. Um --  
13 MS. FOWLER: And you are talking mandatory  
14 by the Santa Rosa Police Department --  
15 MR. SCOTT: Yes --  
16 MS. FOWLER: -- or mandatory by P.O.S.T?  
17 MR. SCOTT: Q. By the Santa Rosa Police  
18 Department or P.O.S.T, just whether -- just whether  
19 it's mandatory one way or the other: That you didn't  
20 have of choice taking it, you had to take it.  
21 A. Well, if you are scheduled for the  
22 training, it's mandatory.  
23 Q. Okay. And can you tell me from looking at  
24 this document which of the training that's reflected  
25 here was mandatory?  
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1 A. (Looking through the document).  
 2 Well, essentially, all of it.  
 3 Q. Okay.  
 4 A. I mean, as far as, if you are assigned to  
 5 a training, you go to the training. There is no --  
 6 I mean, if you request to go to it at a  
 7 different time, yes; or if you can put off the  
 8 training because of scheduling conflicts, and then  
 9 get trained at a different date.  
 10 Q. Okay.  
 11 And so, if I understand you correctly, the  
 12 training you've received was mandated, you had to  
 13 train, it wasn't something that was optional, or  
 14 something that you could elect to do in addition to the  
 15 mandatory training?  
 16 A. Well, I don't think there is anything here  
 17 that I elected to go to. If I did elect to go to  
 18 anything, it was at my request, and then they assigned  
 19 to it me, which became mandatory, you know.  
 20 Q. Well, I'm not sure.  
 21 Okay, can you explain how that works:  
 22 If you request it, and then it becomes mandatory?  
 23 A. Well, let's just go for -- if you look at  
 24 page three of seven?  
 25 Q. Mm-hmm.

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1 A. Down at the last page, or the bottom where  
 2 it says "Assertive Supervision".  
 3 Q. Yes.  
 4 A. I asked to go to that class.  
 5 Q. Okay. And why did you ask to go to that?  
 6 A. It was a class that I wanted to have as  
 7 part of my resume for future promotion.  
 8 Q. Okay. Is there anything else in Exhibit  
 9 No. 1 that you asked for?  
 10 A. Well, I'd have to go through the whole  
 11 thing.  
 12 Q. Sure. Go ahead.  
 13 A. [Looking through the document]  
 14 Q. Take your time. Once we finish this, I'm  
 15 done, and then I'll pass the ball to my co-counsel.  
 16 So, this is the end.  
 17 A. Okay. I asked to be a Field Training  
 18 Officer, so any time -- so, my initial Field Training  
 19 was there. Let me see if I can find it.  
 20 MS. FOWLER: And I guess, again, I will  
 21 object that it's somewhat ambiguous as to "mandatory";  
 22 because, obviously, if you are in a special assignment,  
 23 then, you are required to go to more trainings than the  
 24 average police officer --  
 25 MR. SCOTT: I understand.

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1 MS. FOWLER: -- if you are a SWAT -- if  
 2 you are a SWAT person, it's mandatory; if you are not a  
 3 SWAT person, it wouldn't be mandatory.  
 4 MR. SCOTT: Q. I understand that.  
 5 A. So, if you look at page 4 of 7, down at 11  
 6 -- or, sorry -- 1/11/02.  
 7 Q. Yes?  
 8 A. I had requested, and had tested for,  
 9 becoming a Field Training Officer.  
 10 Q. Okay.  
 11 A. And then, if you look up, all the way up  
 12 at the, I would guess it would be pages prior to that,  
 13 anything where it says "PTO Training," that is "Police  
 14 Training Officer Training".  
 15 So, anything related to that would be  
 16 because I had originally wanted to become a Field  
 17 Training Officer.  
 18 Q. Okay. And were you ever a Field Training  
 19 Officer?  
 20 A. Yes.  
 21 Q. And for how long?  
 22 A. Approximately five years.  
 23 Q. Okay. And from when to when?  
 24 A. Six years, actually.  
 25 From -- Five years, sorry. From, looks

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1 like January of '02 up until September of '06.  
 2 Q. Okay. Anything else in here that you  
 3 believe was something that you requested that wasn't  
 4 required by your assignment?  
 5 A. Page four of seven, with a third of the  
 6 way down, it's called Hazwoper Training.  
 7 Q. What is that?  
 8 A. It's HazMat training. And I was currently  
 9 on the SWAT team, but I wanted to be part of a Weapons  
 10 of Mass Destruction/Chemical Agents type of a Response  
 11 Team.  
 12 Q. Okay.  
 13 A. So I had to learn about hazardous  
 14 materials.  
 15 Q. Okay. Anything else --  
 16 Yeah, and I recognize that there may be  
 17 some things in here that you just miss, but as best  
 18 you can, tell me right now, what other training in  
 19 this document is something you requested that was not  
 20 something mandatory based on your assignment?  
 21 A. I think that's it. If there is anything  
 22 after the Hazwoper thing, then, I was on that team;  
 23 And then anything that said "WMD  
 24 Training," that's just part of my assignment.  
 25 Q. All right. Since you've been with the

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1 Santa Rosa Police Department, have you received any  
2 training in conducting 5150 Detentions?

3 A. I learned about them in Field Training,  
4 obviously.

5 And aside from -- I would say, constant  
6 contacts with 5150-related incidents, or suspected  
7 related incidents, which are a daily occurrence.

8 I would call that essentially on-the-job  
9 training, but it looks like you've got listed here on  
10 page four of seven, EDP Training.

11 Q. Yeah, the Emotionally Disturbed Persons,  
12 does that training relate to 5150 situations, or  
13 something else?

14 A. Emotionally Disturbed Person, it could be  
15 5150; it could be persons who are Under the Influence.

16 A multitude of things.

17 Q. Okay. So, it could be someone who,  
18 because of a mental disorder such as psychosis, or they  
19 are delusional because of, they are just born that way;  
20 or it could be someone -- people who are acting  
21 psychotically or delusionally, because of alcohol or  
22 drugs.

23 A. A multitude of things, correct.

24 Q. And so, you've had training dealing with  
25 "Emotionally Disturbed Persons"?

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1 A. Yes.

2 Q. And is that from a point of view of  
3 defensive tactics, and things of that nature, or just  
4 in terms of doing some kind of assessment, and placing  
5 them under a 5150, or a little of both?

6 A. Defensive tactics, I don't believe were  
7 involved in any of that training. It was on persons.

8 But since we're speaking of "defensive  
9 tactics," routinely, during defensive tactics  
10 training, or a lot of trainings, even firearms  
11 training, we bring up situations where people are not  
12 responding, acting appropriately, emotionally  
13 disturbed. That's routine.

14 Q. Okay. And do you recall anything about  
15 this training for "Emotionally Disturbed Persons" you  
16 received in May of 2002?

17 MS. FOWLER: Other than what he's already  
18 told you.

19 MR. SCOTT: Q. Yes.

20 A. I just remember one part of the training  
21 was, you know, dealing with a - a subject arming  
22 themselves with a knife, threatening to stab  
23 themselves, and you had to speak to them to try to  
24 diffuse the situation, both as individuals and as in  
25 pairs.

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1 Q. Okay. And what were you trained to do in  
2 that situation?

3 A. Attempt to get the person to disarm  
4 themselves, which I remember happened pretty quickly in  
5 my scenario.

6 Q. And how do you do that?

7 A. We were able to establish a rapport, or  
8 get them to respond to me.

9 Q. And how do you do that?

10 A. By series of commands and/or questions.

11 Q. Okay. And how do you --

12 Now, is there some guidelines you have  
13 in terms of how to do the commands, or what questions  
14 to ask?

15 A. No.

16 Q. Did you ever receive a training, or was  
17 there ever a class you took at the Santa Rosa Police  
18 Department, on doing 5150s?

19 MS. FOWLER: It's already been asked and  
20 answered.

21 THE WITNESS: I don't recall.

22 MR. SCOTT: Q. Okay. And I notice in --  
23 on page six of seven, you had a class in December 1999  
24 called "Suicide By Cops," do you see that?

25 A. Yes.

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1 Q. Okay. And what was that all about?

2 A. I don't recall.

3 Q. Okay. Are you familiar with the term  
4 "Suicide By Cop"?

5 A. Yes.

6 Q. And what does that term mean to you?

7 A. When a subject utilizes police or law  
8 enforcement to have them act to kill them by their  
9 actions --

10 Q. And do you --

11 A. -- not by the law enforcement actions, but  
12 by their own actions.

13 Q. And do you believe that the shooting  
14 incident of February 2007 was a "Suicide By Cop"?

15 MS. FOWLER: Again, it calls for  
16 speculation. I'd object, but if you know, you can tell  
17 him.

18 THE WITNESS: I don't know.

19 MR. SCOTT: Q. All right.

20 And what about the shooting of Mr.

21 DeSantis, do you believe that was a "Suicide By Cop"?

22 MS. FOWLER: Again, the same objections.

23 THE WITNESS: I don't know.

24 MR. SCOTT: Q. How many 5150s have you  
25 done in the last year?

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1 A. Me personally? None.  
 2 Q. How many have you done in your career?  
 3 MS. FOWLER: And by that, you mean where  
 4 he's actually detained someone under that stature?  
 5 MR. SCOTT: Yes.  
 6 Q. Where you have detained someone, and  
 7 placed them on a "5150," and taken them to an  
 8 appropriate medical facility.  
 9 A. You know, I can't give you an exact  
 10 number, but I've probably done that dozens of times,  
 11 and been involved in it in hundreds of times.  
 12 Q. Okay. In the last year, how many have you  
 13 been involved in?  
 14 MS. FOWLER: You just asked him that.  
 15 MR. SCOTT: No. I asked him how many did  
 16 he do, versus how many was he involved in.  
 17 THE WITNESS: Oh, probably about a dozen.  
 18 MR. SCOTT: Q. Okay. And what was it  
 19 about those situations that made them fall within the  
 20 category of a 5150, what kind of behavior was observed?  
 21 A. Oh, I think it's all. . .  
 22 MS. FOWLER: Well, I think it's vague and  
 23 ambiguous. Are you talking about the dozen that he  
 24 just identified?  
 25 MR. SCOTT: Q. Right. Yeah, of those

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1 dozens, can you give me examples of types of behavior  
 2 that you observed that resulted in someone being  
 3 5150'd?  
 4 A. They run the gamut, from all types of  
 5 things. It's all over.  
 6 If the persons are unable to care for  
 7 themselves or others; for instance, elderly, who just  
 8 can't remember who they are, or where they came from,  
 9 or whatever, they fall under 5150.  
 10 Q. Okay.  
 11 A. Because we have no way to make sure that  
 12 they can take care of themselves;  
 13 To the persons who want, or are talking  
 14 about committing suicide, have attempted to do so,  
 15 but are now responsive, or, as a matter of fact,  
 16 unresponsive, because of a medical condition, or  
 17 whatever, and they are placed under 5150s.  
 18 Q. Okay. Any other types of situations you  
 19 can recall over the past year or so where you were  
 20 involved in a 5150?  
 21 A. A subject tried to hang himself. He  
 22 had -- he was alive, but unresponsive, but we -- I had  
 23 the officers go ahead and place him on a 5150, based  
 24 upon conversations he had with his roommate just prior  
 25 to that.

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1 Q. Okay. What about --  
 2 Have you ever 5150'd or been involved  
 3 with 5150'ing someone who was delusional, or  
 4 hallucinating?  
 5 A. I'm sure I have; I just don't have an  
 6 exact when and where.  
 7 Q. Okay. And have you received any training  
 8 in terms of psychosis, or people who are psychotic, in  
 9 relation to 5150?  
 10 A. Probably, the EDP training that we had;  
 11 But I've seen numerous times where  
 12 that's been the case, of people acting-out, through  
 13 my years.  
 14 Q. When you say "acting-out," can you give me  
 15 examples of what you mean by that?  
 16 A. Subjects who are -- Well, a lot of the  
 17 times people are under the influence of narcotics,  
 18 alcohol, rambling statements, displaying violent  
 19 behavior, hallucinating, and so forth.  
 20 Q. And have you ever 5150'd any of those  
 21 individuals?  
 22 A. I'm sure I have.  
 23 Q. All right. And did you receive any  
 24 training on people with bipolar condition and people  
 25 who had mania, or things like that?

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1 A. Probably just mentioned in the EDP  
 2 training, that type of thing.  
 3 And then, basic -- I mean, like a  
 4 defensive tactics, or firearms training, just  
 5 regarding people with emotional difficulties.  
 6 Q. Do you know what a bipolar -- what bipolar  
 7 condition is?  
 8 MS. FOWLER: To the extent that calls for  
 9 expert medical opinion, I will object, but you can tell  
 10 him what your understanding is, if you have one.  
 11 THE WITNESS: My understanding is their  
 12 behavior is affected based upon not what they want to  
 13 do, but is a condition in their brain that makes them  
 14 act-out.  
 15 MR. SCOTT: Q. And have you ever --  
 16 Did you receive any training on people  
 17 who are in "manic" phase of a bipolar condition?  
 18 A. Not that I'm aware of.  
 19 MR. SCOTT: Okay. That's all the  
 20 questions I have.  
 21 It might be a good time to take a break,  
 22 and then I'll let my colleague Mr. Nisenbaum carry  
 23 on.  
 24 THE VIDEOGRAPHER: Going off the record,  
 25 the time on the monitor is 11:04 a.m.

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1 continuum of kind of a lesser force, up to greater  
2 force?  
3 A. I wouldn't necessarily describe it as  
4 going -- it's a medium -- I would say, a medium level  
5 of force. But there is no ladder of force,  
6 necessarily, than that we have to increase. We can  
7 move all over the continuum, I should say.

8 Q. I understand that you can move over the  
9 continuum.

10 Just, when we refer to a "continuum of  
11 force," the "continuum" is something that goes --  
12 that begins kind of with lesser force, and ends at  
13 lethal force; is that fair to say?

14 A. Um. . .

15 Q. I'm talking -- I'm not talking about your  
16 options within it, but as much as I am what the  
17 continuum itself represents?

18 MS. FOWLER: Well, I think your question  
19 is somewhat vague and ambiguous.

20 If you are saying that that's how it's  
21 described, I think there are some people who believe  
22 that the "continuum of force" means that you have to  
23 go through each level of force progressively before  
24 you can get to the next level of force.

25 And if that's what you are trying to

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1 respect to the use of the Taser that tells you that the  
2 Taser may be used to incapacitate individuals who are  
3 not responsive to police commands?

4 MS. FOWLER: Well, I'm going to object,  
5 since that may call for an expert opinion. It's also  
6 vague, ambiguous and an incomplete hypothetical.

7 But if you can answer the question as  
8 he's phrased it, go ahead.

9 THE WITNESS: Um, yes, it has been.

10 We have been trained on, when we have  
11 noncompliant, or unresponsive persons, on occasion to  
12 use it. But, again, it is based upon individual  
13 assessments of individual scenarios.

14 MR. NISENBAUM: Q. Okay. Now, directing  
15 your attention again to April 9th, 2007, at some point  
16 you received a call regarding a person who you  
17 ultimately learned was Richard DeSantis; is that  
18 correct?

19 A. Correct.

20 Q. And I know you didn't know his name at the  
21 time, right?

22 A. Correct.

23 Q. You had never heard of Mr. DeSantis prior  
24 to the incident?

25 A. Not that I'm aware of.

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1 imply in your question, I think it's argumentative,  
2 and I think that's what his concern is, so. . .

3 MR. NISENBAUM: I was trying to make that  
4 clear. That's not my implication.

5 MS. FOWLER: Okay.

6 THE WITNESS: So, that's part of the  
7 continuum. It's somewhere in the middle. There is a  
8 lesser amount of force, and then there is, obviously, a  
9 lethal force above that.

10 MR. SCOTT: Q. Okay. And lethal force  
11 includes a force that is likely to kill a person; is  
12 that correct?

13 A. Correct.

14 Q. Okay. Do you know where the Taser falls  
15 in this continuum?

16 A. Somewhere in the middle, in the medium  
17 level of force.

18 Q. Now, since 2004, have you been trained in  
19 the Taser since then?

20 A. Just updated training regarding, in  
21 defensive tactics on where it sits in the continuum,  
22 the likely reactions or the outcomes of Taser use,  
23 updating on how to utilize it better. Standard  
24 training.

25 Q. Okay. And have you had any training with

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1 Q. Okay. And how about his wife Patricia  
2 DeSantis, had you heard of her?

3 A. Not that I'm aware of.

4 Q. Okay. Do you recall the call you first  
5 received regarding Mr. DeSantis?

6 A. Generally.

7 Q. Okay. Do you remember if that call  
8 relayed an address?

9 A. I'm sure it did, but I couldn't even tell  
10 you the name of the address at this time.

11 Q. Okay. The information that you first  
12 received regarding this incident involving Mr.  
13 DeSantis, can you summarize for me what you understood  
14 that information to be?

15 A. That the wife of Mr. DeSantis was  
16 reporting that he was shooting a weapon inside the  
17 residence, and that there were two children inside the  
18 residence, ten years old and two.

19 I was dispatched, along with two other  
20 Officers, I was dispatched from the Station.

21 Q. At the time did you have any information  
22 that Mr. DeSantis had been shooting his weapon at any  
23 person in the residence?

24 A. Not that I was aware of.

25 Q. Okay. To your knowledge, did you have an

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1 understanding -- Strike that.  
 2 Did you have an understanding from -- from  
 3 the information you received, that Mr. DeSantis was --  
 4 Strike that question.  
 5 Did you have an understanding that the  
 6 caller was related to Mr. DeSantis?  
 7 A. Yes, his wife.  
 8 Q. And did you have an understanding that the  
 9 caller was actually present in the same residence as  
 10 Mr. DeSantis?  
 11 A. Yes.  
 12 Q. Did you have an understanding that the --  
 13 Well, did you have any information that  
 14 the caller had been prevented from using the  
 15 telephone to make the call?  
 16 A. I don't know.  
 17 Q. You don't recall any specific information  
 18 to that effect?  
 19 A. Correct.  
 20 Q. All right. Did you have any information  
 21 that Mr. DeSantis had threatened anyone in particular  
 22 inside the residence specifically?  
 23 MS. FOWLER: You mean, other than by  
 24 firing a gun in the residence? Are you talking about  
 25 verbal threats, or. . .

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1 MR. NISENBAUM: Q. Well, what I mean is  
 2 whether verbal or physical.  
 3 A. I knew he was firing a weapon inside the  
 4 residence. That would appear to be threatening, but I  
 5 didn't know of any verbal threats.  
 6 Q. Did you know if the caller --  
 7 Did you have any information that the  
 8 caller had said that Mr. DeSantis thought he was  
 9 actually protecting the people inside the residence?  
 10 A. No, not at that time.  
 11 Q. You didn't have any information that Mr.  
 12 DeSantis was making verbal threats to people inside the  
 13 residence, did you?  
 14 A. No.  
 15 Q. Do you know if the caller expressed fear  
 16 that Mr. DeSantis was going to shoot her?  
 17 A. I don't know.  
 18 Q. Meaning, you don't recall having that  
 19 information?  
 20 A. I don't know if she expressed fear or not.  
 21 Q. You don't have -- As we sit here today,  
 22 you don't have a specific recollection of having any  
 23 information that Mr. DeSantis -- Strike that.  
 24 As we sit here today, you don't recall  
 25 having any specific recollec- -- You don't have a

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1 specific recollection of having any information that  
 2 the caller stated that Mr. DeSantis had -- had said  
 3 that he was going to shoot them, or shoot her?  
 4 A. No.  
 5 Q. Okay. Did you have an understanding of  
 6 how many people were inside the residence, what the  
 7 call was about?  
 8 A. Four people, including Mr. DeSantis.  
 9 Q. And did you have an understanding of who  
 10 those people were in relation to Mr. DeSantis?  
 11 A. Only that there was a wife and two  
 12 children.  
 13 Q. Now, did you receive updates on --  
 14 Well, I take it, once you respond --  
 15 once you heard the call, you responded to the  
 16 DeSantis residence?  
 17 A. Yes.  
 18 Q. Okay. And by the time you responded to  
 19 the DeSantis residence, did you have any updates  
 20 pertaining to the DeSantis incident?  
 21 A. Some.  
 22 Q. Okay. And do you recall how many separate  
 23 communications you received from Dispatch on your way  
 24 up to the point when you arrived at the DeSantis  
 25 residence?

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1 A. I have no idea of the number.  
 2 Q. Do you have a sense of whether it was more  
 3 than five?  
 4 A. Back and forth, it was probably around  
 5 there, somewhere around five.  
 6 Q. Okay. And at the time, by the time that  
 7 you arrived at the DeSantis residence, do you recall  
 8 whether you had had any updates pertaining to gunshots  
 9 in the residence?  
 10 A. Yes.  
 11 Q. And what -- can you describe what those  
 12 updates relayed?  
 13 A. The first one, before the report of  
 14 gunshots, was the identification of a Glock pistol that  
 15 he was shooting.  
 16 Shortly thereafter, I learned that the  
 17 first officers had arrived on-scene.  
 18 And then, immediately after, I was advised  
 19 that there were more shots from the residence.  
 20 Q. Okay. Who advised you that there were  
 21 "more shots from the residence"?  
 22 A. Dispatch.  
 23 Q. And did Dispatch advise you on what basis  
 24 they had that information?  
 25 A. No; just the fact there were more shots

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1 from the residence.

2 Q. Okay. Did Dispatch advise you that the  
3 caller was still on the line?

4 A. Yes.

5 Q. Did you request any information from  
6 Dispatch?

7 A. I requested that they tell the wife to  
8 attempt to flee with the children.

9 Q. Did you inquire as to the status of --  
10 Well, strike that.

11 About how long before you arrived at the  
12 DeSantis residence, did you make that request to  
13 Dispatch, about having the wife and kids attempt to  
14 flee?

15 A. About a minute, I would say, estimate a  
16 minute.

17 Q. Now, before you arrived at the scene, you  
18 had come to an impression in your mind that this could  
19 be a potential murder/suicide; is that right?

20 MS. FOWLER: I'm going to object. There  
21 is lack of foundation. He hasn't testified to that.

22 THE WITNESS: There were numerous things  
23 crossing my mind about what was going on.

24 MR. NISENBAUM: Q. Okay. Was that one of  
25 those?

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1 Q. And is there a driveway that leads to the  
2 residence?

3 A. It's a common driveway. I didn't park  
4 there.

5 Q. Okay. How far from the driveway did you  
6 park?

7 A. 50 yards, approximately.

8 Q. Okay. And was your car -- in what  
9 direction relative to the driveway was your car facing?

10 A. It was facing towards the driveway. It  
11 was facing west on the south side of the street.

12 Q. And do you know if there were any --  
13 Did you park in the street?

14 A. Yes.

15 Q. Do you know if there were any vehicles  
16 that -- Well, let me ask you this:

17 When you stopped your vehicle, and you  
18 were still in the car -- I take it, you got out at some  
19 point, right?

20 A. Correct.

21 Q. Okay. When you stopped the vehicle and  
22 you were still in the car, could you see the DeSantis  
23 residence from the vehicle?

24 A. I probably could have, but at that point I  
25 didn't know which residence it was.

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1 A. I believe my first thoughts were that this  
2 may be a hostage scenario, based upon the fact that  
3 Mrs. DeSantis, who was either unwilling, or unable, to  
4 leave the residence prior to my arrival.

5 Q. How did you know that she was unable to  
6 leave -- Well, strike that.

7 What made you think that she was either  
8 unwilling or unable to leave the residence?

9 A. I had asked for an update from my original  
10 request, to have her flee the residence.

11 And I don't know the terms that were  
12 used, but essentially she advised that she either  
13 wasn't or couldn't leave the residence.

14 Q. And did you make any further inquiries  
15 about why she wasn't leaving the residence?

16 A. No. I didn't have time.

17 Q. Okay. Would it make a difference to you  
18 as to whether she was unwilling to leave the residence,  
19 as opposed to unable to leave the residence?

20 A. It could have a bearing, but not  
21 necessarily. My interest was protection of everyone  
22 involved.

23 Q. When you arrived at the DeSantis  
24 residence, where did you park?

25 A. Southeast of the residence.

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1 Q. Okay. How did you come to find out which  
2 residence it was?

3 A. I started walking towards the residence  
4 and Officer Menke used his flashlight to identify where  
5 he was in relationship to the residence.

6 Q. Did you see an Officer at the residence?

7 A. I saw three Officers approaching from the  
8 west.

9 MS. FOWLER: And, Ben, at some point I'm  
10 going to start objecting. I mean, he's gone over all  
11 of this in his prior deposition testimony, which you've  
12 been provided. And I appreciate, if you want to have  
13 some context for your questions, but we're not going  
14 over every single detail again.

15 MR. NISENBAUM: I hear you. I hear you.  
16 Obviously.

17 Q. Now, what was the first communication you  
18 had with the Officers at the scene?

19 A. My first communications -- my first  
20 contacts was with Officer Jones and Officer Soares at  
21 our patrol cars.

22 Q. Now, other -- do you know whether or not  
23 Officer Jones had a Taser that night?

24 A. I don't know.

25 Q. Do you know whether or not Officer Soares

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1 had a Taser that night?  
 2 A. **I believe he did, but I'm not sure.**  
 3 Q. And is it fair to say that, to your  
 4 knowledge, officers at Santa Rosa who carry a Taser  
 5 have been trained in the use of the Taser?  
 6 A. **They all have.**  
 7 Q. Okay. Now, when you -- at some point you  
 8 observed the driveway, correct?  
 9 A. **Yes.**  
 10 Q. Okay. And I'm talking about the driveway  
 11 to the DeSantis residence.  
 12 A. **Yes.**  
 13 Q. Okay. And it's my understanding, from --  
 14 well, it's my understanding that, in your view, the  
 15 driveway was relatively dark; is that right?  
 16 A. **Yes.**  
 17 Q. Okay. Do you know whether there were any  
 18 police vehicles parked near the driveway closer than  
 19 yours?  
 20 A. **There were not. There was one --**  
 21 **Let me rephrase that. Officer Jones was**  
 22 **parked in front of my patrol car, but it wasn't close**  
 23 **to the driveway.**  
 24 Q. All right. Now, you had the ability to  
 25 illuminate the driveway using your vehicle; is that

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1 correct?  
 2 A. **Not tactically.**  
 3 Q. And can you tell me why not?  
 4 A. **I chose not to.**  
 5 Q. Sure. So you made a conscious choice not  
 6 to use a police vehicle to illuminate the driveway,  
 7 correct?  
 8 A. **Yes.**  
 9 Q. And the reason for that is what?  
 10 A. **Tactics.**  
 11 Q. And how would that be beneficial,  
 12 tactically?  
 13 A. **I didn't know where Mr. DeSantis was upon**  
 14 **arrival. And I knew, just prior to my arrival, that**  
 15 **shots were still being fired from the residence.**  
 16 **I wasn't going to drive into a -- into**  
 17 **the midst of a shooting.**  
 18 Q. Okay. When did you first observe  
 19 Mr. DeSantis?  
 20 A. **As I rounded the southeast corner of the**  
 21 **common driveway.**  
 22 Q. And where was he?  
 23 A. **Standing just off of the steps to his**  
 24 **residence.**  
 25 Q. And in relation to the driveway to the

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1 residence, where are the steps?  
 2 A. **The northeast side.**  
 3 Q. How far from the driveway was Mr. DeSantis  
 4 standing on those steps?  
 5 MS. FOWLER: Well, I'm going to object.  
 6 It's vague and ambiguous. The steps are in part of the  
 7 driveway, if you've seen the site.  
 8 MR. NISENBAUM: [Inaudible]  
 9 THE WITNESS: He was standing in the  
 10 driveway.  
 11 MR. NISENBAUM: Q. And was anyone around  
 12 him?  
 13 A. **I believe it was his wife, who I**  
 14 **determined, later determined to be his wife and a,**  
 15 **approximately a two-year-old child in her arms were**  
 16 **standing on the steps.**  
 17 Q. Now, at this point you had an  
 18 understanding that there was one other person who could  
 19 still be in the residence, correct?  
 20 A. **Yes.**  
 21 Q. Prior to the shooting of Mr. DeSantis, did  
 22 you ever see that other person?  
 23 A. **No.**  
 24 Q. From your observation could you get a  
 25 sense of the demeanor of Mr. DeSantis' wife?

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1 A. **No.**  
 2 Q. Okay. Were you able to tell whether or  
 3 not -- Did you form any opinion in furtherance of the  
 4 earlier possibility that there could be a hostage  
 5 situation, that she was a hostage of Mr. DeSantis?  
 6 MS. FOWLER: Well, I'm going to object  
 7 that it's vague and ambiguous. It calls for  
 8 speculation.  
 9 If you can understand the question,  
 10 answer it, but. . .  
 11 THE WITNESS: I don't know whether she was  
 12 a hostage or not.  
 13 MR. NISENBAUM: Q. Okay. Prior to the  
 14 shooting of Mr. DeSantis, did she say anything to  
 15 you -- Strike that -- did she say anything that you  
 16 could hear?  
 17 A. **Not that I was aware of.**  
 18 Q. Prior to the shooting of Mr. DeSantis, did  
 19 you ask her any questions?  
 20 A. **I did not.**  
 21 Q. Okay. Now, to your knowledge, she was  
 22 ordered to go into the residence before the shooting  
 23 occurred, correct?  
 24 A. **By one of the officers; I don't know who**  
 25 **it was.**

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1 Q. You never -- Did you ever hear any officer  
2 ask her any questions about the circumstance? And I  
3 mean the circumstances that brought you to the scene.  
4 A. **There was no time there to do that.**  
5 Q. Well, from the time that you arrived, from  
6 the time that you first saw Mr. DeSantis to the time  
7 the shooting occurred, about how much time passed?  
8 A. **A minute, a minute and a half, total.**  
9 Q. Did you give any consideration to, during  
10 that minute to a minute and a half time period, did you  
11 give any consideration to bringing the police car  
12 around to illuminate the driveway?  
13 A. **No.**  
14 Q. Why not?  
15 A. **I could see the scene at that point.**  
16 Q. So, at that point, was the scene fairly  
17 well-lit?  
18 A. **It was not well-lit; however, I could see**  
19 **Mr. DeSantis.**  
20 Q. And as I understand it, Mr. DeSantis was  
21 topless?  
22 A. **No shirt, correct.**  
23 Q. And he was wearing jeans?  
24 A. **Yes.**  
25 Q. Did you feel that you could -- that the

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1 lighting was sufficient for you to observe any weapons  
2 that he might have held in his hands?  
3 A. **Yes.**  
4 Q. Okay. And you did not observe any  
5 weapons, correct?  
6 A. **Correct.**  
7 Q. Was the lighting sufficient for you to  
8 observe his waistband?  
9 A. **The front of it, yes.**  
10 Q. Okay. And did there appear to be any  
11 weapons in the waistband?  
12 A. **Not sticking out the top.**  
13 Q. Okay. Did you notice any bulges in the  
14 waistband?  
15 A. **I couldn't tell.**  
16 Q. Okay. And why couldn't you tell?  
17 A. **I couldn't see that part. I couldn't tell**  
18 **whether there was anything sticking in them, or**  
19 **anything in his pockets.**  
20 Q. And is that because Mr. DeSantis was too  
21 far away?  
22 A. **I don't know whether it was too far away,**  
23 **the lighting conditions, the way he was standing.**  
24 Q. Did it occur to you at that point --  
25 strike that.

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1 Did you give any consideration at that  
2 point to attempt to get greater visibility through the  
3 use of better lighting upon Mr. DeSantis?  
4 A. **No. We were directed at trying, or more**  
5 **focused at trying to get compliance from Mr. DeSantis**  
6 **at that point.**  
7 Q. Now, it was important to you to know  
8 whether or not Mr. DeSantis was still armed, correct?  
9 A. **Yes.**  
10 Q. Did you ask him whether he was still  
11 armed?  
12 A. **We didn't get that far.**  
13 Q. All right. So you did not ask him that  
14 question?  
15 A. **Correct.**  
16 Q. And you never asked Mrs. DeSantis whether  
17 he was still armed, correct?  
18 A. **Correct.**  
19 Q. Okay. Is there a reason you did not ask  
20 Mrs. DeSantis whether her husband was still armed?  
21 A. **I was focused on Mr. DeSantis at the time.**  
22 Q. What was Mr. DeSantis doing at that time?  
23 A. **At which time?**  
24 Q. During the time period when you did not  
25 ask Mrs. DeSantis whether or not her husband was still

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1 armed.  
2 MS. FOWLER: Well, that covers the entire  
3 period of time. And I think that's vague and  
4 ambiguous, because he said he never asked her. So, the  
5 whole time he was there was during the time he didn't  
6 ask her.  
7 MR. NISENBAUM: Maybe I can make it a  
8 little more clear.  
9 Q. It was up to about a minute and a half  
10 from the time you saw Mr. DeSantis to the time he was  
11 shot. We've described that already, I think.  
12 A. **Correct.**  
13 Q. Okay. During that minute and a half time  
14 period, so I understand, is it your testimony that you  
15 never had the opportunity to ask Mrs. DeSantis if her  
16 husband was still armed?  
17 A. **Correct.**  
18 Q. Okay. Now, an Officer did have the  
19 opportunity to ask her to go inside the house, correct?  
20 A. **I think an officer ordered her to go back**  
21 **into the house.**  
22 Q. Now, before she went into the --  
23 At some point she did go into the house,  
24 correct?  
25 MS. FOWLER: I'm sorry, I was just

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1 possible murder/suicide situation?  
2 A. No.  
3 Q. You were interviewed shortly after the  
4 incident occurred, correct?  
5 A. Correct.  
6 Q. And do you recall who interviewed you?  
7 A. Officer Vivian in the Sheriff's Department  
8 and a Detective from the Petaluma Police Department. I  
9 don't recall his name.  
10 Q. Okay. Do you recall. . .  
11 I do have one other question. I asked  
12 you about your vision. How is your hearing?  
13 A. It's good.  
14 Q. Okay. Do you have tinnitus?  
15 A. I do.  
16 Q. Okay. And what is tinnitus?  
17 A. It's a ringing in the ears.  
18 Q. And is that a chronic condition?  
19 MS. FOWLER: Well, to the extent that it  
20 calls for a medical opinion, I object, but if you can  
21 answer it, go ahead.  
22 THE WITNESS: It appears so.  
23 MR. NISENBAUM: Q. Is it a persistent  
24 condition?  
25 A. Yes, but it's sometimes noticeable,

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1 sometimes not.  
2 Q. Okay. And when you say "ringing in the  
3 ears," kind of ringing on what level?  
4 A. Say, when I'm attempting, or when I'm  
5 quiet, or I'm trying to sleep, sometimes I can hear  
6 ringing in my ears. Not like bells, or anything, just  
7 a dull ringing.  
8 Q. At any point in time during this incident  
9 involving Mr. DeSantis from the time you arrived at the  
10 DeSantis residence up to the point of when shots were  
11 fired, did you experience any symptoms of tinnitus?  
12 A. No.  
13 Q. Now, what was your understanding with  
14 respect to less lethal that was present at the scene of  
15 the DeSantis incident?  
16 And I'm asking you, at the time you were  
17 at the DeSantis incident, at the time that this was  
18 occurring, right, up to the point when shots were  
19 fired, what was your understanding of the less lethal  
20 options that you had with respect to Mr. DeSantis  
21 that you had available to you?  
22 MS. FOWLER: Him, personally?  
23 MR. NISENBAUM: Q. Well, that would be  
24 available, either on your person, or immediately  
25 available to you by another officer who is at the

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1 scene.  
2 A. The other officers, well for me  
3 personally, was the OC or baton, or physical hands-on.  
4 There was Sergeant Soares, with the Sage;  
5 I believe there were at least two other  
6 Officers there with a Taser;  
7 And then, Officer Ellsworth had a police  
8 canine.  
9 Q. Were you the most senior Officer at the  
10 scene?  
11 A. No.  
12 Q. Who was?  
13 A. Sergeant Soares.  
14 Q. And was there, to your knowledge, an  
15 Officer who kind of had the overall command of the  
16 scene?  
17 A. I did.  
18 Q. And why was that you, as opposed to  
19 Sergeant Soares?  
20 A. From my SWAT background, I've got some  
21 trainings in tactics, and I -- command of the scene: I  
22 ordered that I was going to be in command of the scene.  
23 Q. How did you give that order?  
24 A. I advised Sergeant Soares on the way there  
25 that I would take care of tactics, while he took care

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1 of communications.  
2 Q. Now, in "taking care of tactics," did you  
3 come to a conclusion, up to the point when the shooting  
4 occurred, that the Taser would be inappropriate to use  
5 in this incident?  
6 A. Up to just prior to the shooting, he was  
7 at too close of a distance -- or too -- Sorry -- too  
8 far away of distance to use the Taser.  
9 Nor had he displayed characteristics, or  
10 a reason to deploy the Taser up to that point.  
11 Q. My pen is dying here. I think I only  
12 brought one. Does anyone have one?  
13 THE VIDEOGRAPHER: Here.  
14 MR. NISENBAUM: Thank you.  
15 Q. Okay. Now, the X26, right?  
16 A. Yes.  
17 Q. That's the Taser model?  
18 A. Correct.  
19 Q. And although your Taser X26 was in the  
20 trunk, there were at least two other Tasers that were  
21 actually with other Officers at the scene of the  
22 DeSantis residence?  
23 A. Yes.  
24 Q. Okay. And what range does the Taser X26  
25 have?

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1 Q. Okay. And is it your testimony that these  
 2 were not the right circumstances for the dog to be  
 3 used?  
 4 MS. FOWLER: I'm going to object. That  
 5 calls for an expert opinion. Mr. -- Sergeant Celli has  
 6 already testified that he's not trained in the use of  
 7 canines.  
 8 MR. NISENBAUM: Okay. But he has  
 9 testified that he's the commander at the scene.  
 10 Q. So, I want to know essentially whether  
 11 that was an option that you gave the other Officers to  
 12 use?  
 13 A. The other Officer, Jerry Ellsworth, has  
 14 the ability to make that decision on his own, without  
 15 my command, based upon his perception of the abilities  
 16 of himself and/or his dog.  
 17 Q. Okay. So the use of the dog did not fall  
 18 within your range of use-of-force options; is that  
 19 correct?  
 20 A. It was there. It was an option.  
 21 However, I wasn't, at that time, while  
 22 Mr. DeSantis was, although hesitantly complying, was  
 23 complying, there was no reason to send the dog at  
 24 that point, nor did I order it.  
 25 Q. I see. When he stopped complying, you

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1 could have ordered that the dog be sent, correct?  
 2 A. When he started to charge the Officer?  
 3 Q. When he stopped complying.  
 4 A. There was no time to give that order.  
 5 Q. Okay. At the point when the Sage was  
 6 used, a Taser could have been used, correct?  
 7 MS. FOWLER: I'm going to object. Calls  
 8 for speculation. Don't answer that.  
 9 MR. NISENBAUM: Q. I'm not asking --  
 10 I'm asking you, as a commander at the  
 11 scene: You could have given an order for a Taser to  
 12 be used, correct?  
 13 MS. FOWLER: You mean, did he have the  
 14 ability to order an Officer to do that?  
 15 MR. NISENBAUM: Q. Yes.  
 16 A. At the time I did not have the ability to  
 17 do that, based upon the time and distance of Mr.  
 18 DeSantis.  
 19 Q. Okay. It's fair to say that you never saw  
 20 any object consistent with a weapon on Mr. DeSantis'  
 21 person, correct?  
 22 MS. FOWLER: It's already been asked and  
 23 answered several times.  
 24 THE WITNESS: Correct.  
 25 MR. NISENBAUM: Q. No one ever re- -- No

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1 other Officer at the scene reported to you that they  
 2 had observed an object consistent with a weapon on Mr.  
 3 DeSantis, correct?  
 4 A. Correct.  
 5 Q. Now, if I understand your statement --  
 6 Strike that.  
 7 Following the shooting you gave a  
 8 statement to the Petaluma Police Department  
 9 Investigators, correct?  
 10 A. Yes.  
 11 MS. FOWLER: And the Sheriff.  
 12 THE WITNESS: And the Sheriff.  
 13 MR. NISENBAUM: Q. And the Sheriff, okay.  
 14 A. Yes.  
 15 Q. Now, do you recall the name of the person  
 16 you gave the statement to?  
 17 A. No, I don't, other than Detective Vivian  
 18 from the Sheriff's Department.  
 19 Q. Okay. Do you know Mike Pierre?  
 20 A. That's his name, yes.  
 21 Q. Okay. That's from the Petaluma Police  
 22 Department?  
 23 A. Correct.  
 24 Q. Okay. Now, it sounds like after the  
 25 shooting you were angry?

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1 MS. FOWLER: Well, I'm going to object.  
 2 That's argumentative, and that isn't reflected.  
 3 He hasn't testified to that, so it  
 4 assumes facts not in evidence.  
 5 But you can answer the question.  
 6 THE WITNESS: Yes.  
 7 MR. NISENBAUM: Q. All right. And I  
 8 think you actually told Officer Pierre -- Pierre is an  
 9 Officer, right?  
 10 A. Detective, yes.  
 11 Q. Detective -- Detective Pierre, that --  
 12 that right after you shot you were pretty pissed off,  
 13 you were mad at him, correct?  
 14 A. Mad at Mr. DeSantis, yes.  
 15 Q. Okay. And you were mad because he had  
 16 other options, right?  
 17 A. Correct.  
 18 Q. Now -- And you told Detective Pierre that  
 19 you weren't going to let Mr. DeSantis attack and kill  
 20 your people, correct?  
 21 A. Correct.  
 22 Q. Was that a decision -- When did you make  
 23 that decision?  
 24 A. When Mr. DeSantis started to attack them.  
 25 Q. And the attack -- When we talk about

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STATE OF CALIFORNIA )  
 ) ss.  
 )

CERTIFICATE OF REPORTER

I, A. MAGGI SAUNDERS, a Certified Shorthand Reporter in and for the State of California, duly appointed and licensed to administer oaths and so forth, do hereby certify:

That the witness named in the foregoing deposition was by me duly sworn to tell the truth, the whole truth and nothing but the truth;

That the deposition was reported by me, a Certified Shorthand Reporter and disinterested person, and thereafter transcribed into typewriting under my direction;

That if the deposition has not been signed by the time of trial, a reasonable opportunity having been given the witness to do so, signature has been waived in accordance with stipulation between counsel.

IN WITNESS WHEREOF, I have hereunto set my hand and subscribed my signature this 22nd day of June, 2008.

*A. Maggi Saunders*

A. MAGGI SAUNDERS, C.S.R. No. 2755,  
Certified Shorthand Reporter,  
In and For the State of California

